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No. 02-196

In the Supreme Court of the United States

NATIONAL PARK HOSPITALITY ASSOCIATION,

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, *ET AL.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 6, 2002
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NOTICE

The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the printed Appendix to the Petition for a Writ of Certiorari:

A. Opinion of the United States Court of Appeals for the District of Columbia Circuit, filed March 1, 2002 ..... 1a

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 00-CV-2885
(*Lead Docket: No. 00-CV-2838*)

NATIONAL PARK HOSPITALITY ASSOCIATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, *ET AL.*,

Defendants

RELEVANT DOCKET ENTRIES*

DATE	#	DOCKET ENTRY
[following entries are from Docket in 00-2885]		
12/1/00	1	COMPLAINT filed by plaintiff NATIONAL PARK HOSPITALITY

* For the Court's convenience, the docket entries set forth below have been revised and reworded to reflect more accurately and clearly the actual entries contained in the lower court's docket.

Because in the district court this case was consolidated with three other similar lawsuits, and thereafter the clerk only fully updated the docket sheet in the "lead" case, the docket presented here is derived from both that in the instant case and that in the "lead" case.

DATE	#	DOCKET ENTRY
		ASSOCIATION
1/19/01	8	MOTION filed by federal defendants to dismiss complaint, or, in the alternative for summary judgment
1/23/01	14	ADMINISTRATIVE RECORD filed by federal defendants
1/25/01	12	MOTION filed by DELAWARE NORTH PARK SERVICES to intervene
1/30/01	17	ADMINISTRATIVE RECORD filed by federal defendants
2/14/01	24	MEMORANDUM/ORDER by Judge Royce C. Lamberth granting plaintiffs' joint motion to consolidate case Nos. 00-2838, 00-2937, 00-2885 and 00-3085
2/14/01	--	ALL PLEADING IN THIS CASE ARE BEING DOCKETED AND FILED IN C.A. 00-2838 PURSUANT TO ORDER DATED 2/14/01.
		[following entries inserted from Docket in 00-2838]
2/28/01	34	RESPONSE (JOINT) by plaintiffs in opposition to motion to dismiss, motion for summary judgment, and miscellaneous discovery motions
2/28/01	36	JOINT MOTION (SECOND) by plaintiffs for partial summary judgment, on the grounds that the provisions of the NPS Solicitations and Regulations Pertaining to Contract Performance and Concessioner Choice Violate the 1998 ACT
3/7/01	40	NOTICE OF SUPPLEMENTAL

DATE	#	DOCKET ENTRY
		AUTHORITY RE: Tucker Act Jurisdiction and applicability of the contract disputes act by plaintiffs
4/9/01	53	MEMORANDUM by federal defendants in opposition to joint motion for partial summary judgment, on the grounds that the provisions of the NPS Solicitations and Regulations Pertaining to Contract Performance and Concessioner Choice Violate the 1998 ACT
4/9/01	54	REPLY by federal defendants to response in opposition to motion to dismiss by federal defendants, motion for summary judgment by federal defendants
4/24/01	61	MEMORANDUM AND ORDER by Judge Royce C. Lamberth granting motion for DELAWARE NORTH PARK SERVICES to intervene in 1:00-cv-02937 and 1:00-cv-02885
4/24/01	--	MOTION filed by intervenor-defendant DELAWARE NORTH PARK SERVICES to dismiss complaint
4/30/01	70	REPLY by plaintiffs in support of joint motion for partial summary judgment, on the grounds that the provisions of the NPS Solicitations and Regulations Pertaining to Contract Performance and Concessioner Choice Violate the 1998 ACT, and other claims
5/18/01	79	MOTION filed by plaintiff AMFAC RESORTS, L.L.C for preliminary injunction

DATE	#	DOCKET ENTRY
5/23/01	80	MEMORANDUM OPINION by Judge Royce C. Lamberth
5/23/01	81	ORDER by Judge Royce C. Lamberth: granting in part, denying in part motion to dismiss complaint; granting in part and denying in part joint motion for partial summary judgment, on the grounds that the NPS Solicitations and Regulations Pertaining to Contract Performance and Concessioner Choice Violate the 1998 ACT
5/23/01	84	ADMINISTRATIVE RECORD by federal defendant
6/25/01	105	JUDGMENT by Judge Royce C. Lamberth: judgment is entered in favor of defendants and these cases are dismissed with prejudice
6/27/01	109	MOTION filed by plaintiff AMFAC RESORTS, L.L.C for injunctive relief pending appeal
6/26/01	112	MEMORANDUM by plaintiff AMFAC RESORTS, L.L.C in support of motion for an injunction pending appeal
		[following entry in Docket in 00-2885]
6/28/01	53	NOTICE OF APPEAL by plaintiff NATIONAL PARK in 1:00-cv-02885 from judgment order entered on 6/25/01.
		[following entries inserted from Docket in 00-2838]
6/27/01	111	MOTION filed by plaintiffs for an injunction pending appeal

DATE	#	DOCKET ENTRY
7/2/01	115	MEMORANDUM by federal defendants in opposition to plaintiffs' motions for injunctions pending appeal
7/2/01	119	MEMORANDUM by intervenor-defendant DE NORTH PARKS SVC in opposition to motion for an injunction pending appeal
7/5/01	114	ORDER by Judge Royce C. Lamberth denying motions for injunctions pending appeal and related procedural motions

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 01-5223, 01- 5226, 01- 5229, 01- 5233

AMFAC RESORTS, L.L.C. *ET AL.*

Appellants,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, *ET AL.*,

Appellees

RELEVANT DOCKET ENTRIES*

6/29/01	CIVIL-US CASE docketed. Notice of Appeal filed by Appellant Amfac Resorts.
7/10/01	PER CURIAM ORDER filed, on the court's own motion, that Nos. 01-5223 and 01-5226 be consolidated
7/10/01	MOTION lodged by Appellant Amfac Resorts for injunction pending appeal
7/10/01	MOTION filed by Appellant Amfac Resorts to expedite briefing schedule, and to accelerate the date for oral argument

* For the Court's convenience, the docket entries set forth below have been revised and reworded to reflect more accurately and clearly the actual entries contained in the lower court's docket.

7/10/01	MOTION filed by Appellant National Park Hospitality Association for injunction pending appeal [missing from docket sheet]
7/10/01	MOTION filed by Appellant National Park Hospitality Association to expedite briefing schedule, and to accelerate the date for oral argument [missing from docket sheet]
7/11/01	PER CURIAM ORDER filed, on the court's own motion, that Nos. 01-5223, et al. and 01-5229 be consolidated
7/16/01	OPPOSITION filed by Appellee Delaware North Park Services to motions for injunction pending appeal
7/16/01	OPPOSITION filed by federal appellees to motions for injunction pending appeal
7/17/01	REPLY filed by Appellant Amfac Resorts in support of motion for injunction pending appeal
7/17/01	REPLY filed by Appellant National Park Hospitality Association in support of motion for injunction pending appeal [missing from docket sheet]
7/19/01	PER CURIAM ORDER filed denying motions for injunction pending appeal and granting motions for expedited briefing and oral argument
7/23/01	CLERK'S ORDER filed consolidating No. 01-5233 with No 01-5223, et al.
8/20/01	BRIEF filed by Appellant Amfac Resorts, et al.
8/20/01	ADDENDUM TO BRIEF filed by Appellant Amfac Resorts, et al.
8/20/01	APPENDIX filed by Appellant Amfac Resorts,

et al.

9/19/01	BRIEF filed by Federal Appellees DOI, et al., Non-Federal Appellee Delaware North Parks Svc, Inc. in 01-5223, et al.
9/19/01	STATUTORY AND REGULATORY APPENDIX filed by Appellees DOI, et al., in Nos. 01-5223, et al.
10/3/01	REPLY BRIEF filed by Appellants Amfac Resorts, et al., in Nos. 01-5223, et al.
11/6/01	ORAL ARGUMENT HELD before Randolph, Garland, Williams.
3/1/02	JUDGMENT affirming in part, reversing in part and vacating in part for the reasons in the accompanying opinion. Before Judges Randolph, Garland, Williams.
3/1/02	OPINION filed for the Court by Judge Randolph
3/1/02	CLERK'S ORDER filed The Clerk is directed to withhold issuance of the mandate pending disposition of any timely petition for rehearing.
4/15/02	PETITION for rehearing & PETITION for rehearing en banc filed by Appellants
5/8/02	PER CURIAM ORDER, in Banc, filed denying suggestion rehearing en banc
5/8/02	PER CURIAM ORDER filed denying petition rehearing
5/28/02	MANDATE ISSUED to Clerk, District Court
8/12/02	NOTICE filed by Clerk, Supreme Court advising of the filing on 8/6/02 and docketing on 8/8/02 of a petition for writ of certiorari. Supreme Court Docket No. 02-196.

11/15/02	NOTICE filed by Clerk, Supreme Court advising of the entry of an order on 11/12/02, granting the petition for writ of certiorari. Supreme Court Docket No. 02-196.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[CAPTION OMITTED]

COMPLAINT

The National Park Hospitality Association ("NPHA"), for its Complaint against the United States Department of the Interior, Secretary of the Interior Bruce Babbitt, and Director of the National Park Service Robert G. Stanton, avers as follows:

INTRODUCTION

1. This Complaint results from the latest attempt by the Department of the Interior's National Park Service, the Secretary of the Interior, and the Director of the National Park Service (collectively the "NPS") to deprive the concessioners who operate the public concession services in this country's national parks of their contractual, statutory, and constitutional rights, contrary to Congress's expressed intent and the public interest in promoting the development of park concessions.

2. The NPS has arbitrarily, capriciously, and unlawfully interpreted the National Park Service Concessions Management Improvement Act of 1998 ("1998 Act"), included as sections 401-419 of the National Parks Omnibus Management Act of 1998, Pub. L. No. 105-391, 112 Stat. 3497 (Nov. 13, 1998) (codified with irrelevant exceptions at 16 U.S.C. §§ 5951-5966), so as to deprive concessioners of their contractual, statutory and constitutional rights.

3. The NPS's erroneous interpretations of the 1998 Act were first embodied in its final regulations interpreting that statute, see "Concession Contracts," 65 Fed. Reg. 20630 (Apr. 17, 2000), 36 C.F.R. pt. 51 (the "Regulations"), which ignored the plain terms of the 1998 Act and the objections raised by the NPHA and others during the rulemaking process. Based on these unlawful Regulations, the NPS published a model "Standard Concession Contract," *see* 65 Fed Reg. 26052 (May 4, 2000) (the "Standard Concession Contract"), and has now commenced issuing prospectuses for new contract opportunities identical to that model.

4. The NPHA and its members object to key provisions of the prospectuses issued by the defendants, and to the Standard Concession Contract and Regulations on which they are based.

5. The regulations, Standard Concession Contract, and issued prospectuses clearly indicate that the NPS intends:

> (i) arbitrarily, capriciously, and unlawfully to choose new or replacement concessioners by denying many incumbents the contractual rights to preferential renewal that Congress specifically protected in the 1998 Act; by defining all renewal preferences too narrowly; and by inappropriately weighing certain factors for the selection of the best bid to the detriment of other, statutorily mandated, criteria.
>
> (ii) arbitrarily, capriciously, and unlawfully to circumscribe how it will interact with concessioners during their contracts by denying concessioners their statutory right to the protections of the Contract Disputes Act; by mandating unauthorized arbitration for disputes between the NPS and concessioners; by denying concessioners the right to encumber their investments to fund further development within the National Park system and to

refinance existing debt; by denying concessioners the right to engage in corporate control transactions without the approval of the NPS; and by retaining the ability unilaterally to change many contract terms.

(iii) arbitrarily, capriciously, and unlawfully to determine what payments concessioners are entitled to receive after a concession contract expires by undervaluing the concessioners' "leasehold surrender interests" and by denying them immediate compensation for those interests when they are displaced upon the expiration of a concession contract.

The NPS is thus engaged in an illegal plan to deprive concessioners of their contractual, statutory, and constitutional rights.

6. The NPS's attempt to expand its authority at the expense of concessioners would significantly increase the cost of running concessions and make the operation of concessions a much less desirable business. Accordingly, it would harm the millions of Americans who rely on concessioners to provide affordable services in the country's national parks and would thwart Congress's clear and oft-stated intention to put park concessions on a more "business-like" footing.

7. This Court should therefore declare the Regulations invalid to the extent that they violate concessioners' contractual, statutory, or constitutional rights, and enjoin the NPS from issuing any new prospectuses (based on the Standard Concession Contract or otherwise) that infringe on the rights of concessioners. Injunctive and declaratory relief is necessary to prevent the NPS from continuing its efforts to obtain, through unauthorized and unlawful regulations, prospectuses and contracts, restrictions on concessioners that are arbitrary and capricious, contrary to statutory requirements, and precluded by contract.

JURISDICTION AND VENUE

8. Jurisdiction in this Court is proper under 28 U.S.C. §§ 1331, 1346, 1361, 1491(b)(1), 2201, and 2202, and under 5 U.S.C. § 702.

9. Venue in this District is proper under 28 U.S.C. § 1391(b) and (e).

PARTIES

10. Plaintiff National Park Hospitality Association (NPHA), which was originally formed as an unincorporated association called the Western Conference of National Park Concessioners in 1929, is a non-profit trade association incorporated in the Commonwealth of Virginia. The goal of the NPHA is to enhance the experience of visitors to our national parks by focusing on issues of common concern, such as the quality of visitor services and facilities and the relationship between concessioners and the NPS. This has been accomplished both by encouraging cooperative projects with the NPS and by interacting with Congress and other governmental agencies on legislative initiatives to improve the visitor experience, conserve important park resources and protect the rights of Americans to visit and enjoy their national parks. With over 150 members, the NPHA represents the vast majority of park concessioners, both large and small, that provide service through concession contracts with the NPS. The NPHA has standing to challenge the Regulations, Standard Concession Contract and prospectuses. *See Hunt* v. *Washington Apple Advertising Comm.*, 432 U.S. 333, 334 (1977). It is an association that exists to represent its members in the regulatory context; its members are suffering imminent harm because, among other things, their bidding strategies for the prospectuses that the NPS has issued depend on the outcome of this litigation; and there is no need for an individualized remedy where, as here, only declaratory and injunctive relief is sought.

11. Defendant United States Department of the Interior is an agency of the United States. The National Park Service is a part of the Department of the Interior.

12. Defendant Bruce Babbitt is Secretary of the Interior and is sued in his official capacity.

13. Defendant Robert G. Stanton is the Director of the National Park Service and is sued in his official capacity. Mr. Stanton is the federal officer personally responsible for compliance with laws relating to the issuance of concession contracts.

BACKGROUND

Concessions In The National Park System

14. As set forth by Congress in 16 U.S.C. § 1, the fundamental purpose of the National Park system is:

> to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

15. "Provid[ing] for the enjoyment" of the national parks in most cases requires visitor service facilities – including lodges, restaurants, and retail outlets – and typically includes constructing, cleaning, and repairing those commercial establishments. Throughout its history the NPS has relied primarily on private contractors to build, maintain, and operate such facilities.

16. The first director of the NPS recognized that "[h]otel operators and restauranteurs * * * were reluctant to build facilities and conduct operations in parks that were relatively inaccessible to most Americans." He therefore "lured these businesses into parks by offering them contractual incentives" to counterbalance these extremely risky and frequently harsh business conditions. *See* National Park Service, "Concessions Reform" (available at http://www.nps.gov/pub_aff/-issues/concess.html) (attached as Exhibit 1). Among other incentives that the NPS has used and continues to use are awarding exclusive concessions, granting preferential rights of renewal, and guaranteeing concessioners that they will recoup the capital investments they make if their concessions are not renewed. In exchange, concessioners agree, among other things, to return an agreed-upon portion of gross revenues to the government and to make specified capital commitments to improve national park visitor facilities.

The Concessions Policy Act Of 1965

17. Although in 1998 Congress repealed the Concessions Policy Act of 1965 (the "1965 Act"), Pub. L. 89-249, 79 Stat. 969 (Oct. 9, 1965), formerly codified at 16 U.S.C. §§ 20-20g, almost all concessioners are currently operating under contracts that were issued pursuant to the 1965 Act and that embody 1965 Act policies and practices. The savings clause of the legislation that repealed the 1965 Act, *see infra* ¶ 25, provides that these contracts remains valid and enforceable.

18. The 1965 Act was designed to encourage concessioners to make necessary capital investments in national park facilities without diverting financial resources from the government. It protected concessioners from arbitrary NPS action by codifying the previous NPS practice of giving concessioners (i) a compensable property interest in capital projects and (ii) a right of preference in the renewal of concession contracts. Based on these two primary incentives, concessioners invested hundreds of millions of dollars in park facilities to serve the public. It is unlikely that concessioners would have been willing to make these investments if the 1965 Act had not been passed and these incentives not been given the force of law; indeed, concessioners had previously slowed their capital programs in reaction to legal questions raised about the validity of these rights.

19. The 1965 Act explicitly recognized concessioners' property rights in the facilities constructed during the course of a concession contract by codifying a federal right called the concessioners' "possessory interest" that had been a feature of many concession contracts since the 1940's. Section 6 of the 1965 Act states:

> A concessioner who * * * acquires or constructs, pursuant to a contract and with the approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title * * *. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation.

16 U.S.C. § 20e.

20. Congress also defined the exact method of valuing this possessory interest, assuring that the concessioner would receive protection for the "sound value" of its interest. The 1965 Act defined "sound value" by explicit reference to the "reconstruction cost" of the facilities, rather than their lower replacement cost. *Ibid.*

21. Section 5 of the 1965 Act mandated that concessioners be given a "right of preference" in the renewal of their concession contracts:

> The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary.

16 U.S.C. § 20d.

22. These statutorily-required, contractual rights of renewal were critical to the decision of many concessioners to bid on concessions contracts and to invest in facilities development within the National Park system.

The Concessions Management Improvement Act Of 1998

23. Concerned with the NPS's management of the concessions program and other factors, Congress passed the 1998 Act on October 14, 1998, which President Clinton signed on November 13, 1998. The 1998 Act sought to further the mission of the national park system, by protecting the parks for the future while at the same time accommodating the need of users of the parks to have appropriate facilities and services. *See* 1998 Act § 402, 16 U.S.C. § 5951.

24. The 1998 Act governs the entire concessions contract process, from delineating the factors that confine the NPS's choice of concessioner at the outset to ensuring that concessioners' rights are protected when a contract expires.

25. The 1998 Act replaced the 1965 Act, which as a general matter was repealed. *See* 1998 Act § 415(a), 16 U.S.C. § 20 note. The 1998 Act specifically includes a savings clause, however, which provides:

> The repeal of [the 1965 Act] shall not affect the validity of any concessions contract or permit entered into under such Act, but the provisions of [the 1998 Act] shall apply to any such contract or permit except to the extent such provisions are inconsistent with the terms and conditions of any such contract or permit.

Ibid.

26. Thus, the 1998 Act protects the fundamental rights that were guaranteed to concessioners under the 1965 Act and under contracts issued pursuant to the 1965 Act. In par-

ticular, the savings clause makes the 1998 Act inapplicable "to the extent such provisions are inconsistent with the terms and conditions of any * * * contract" issued pursuant to the 1965 Act. *Ibid.*

The Regulations And Model "Standard Concession Contract"

27. The NPS promulgated draft regulations implementing the 1998 Act on June 30, 1999, and issued a draft Standard Concession Contract (that it represented would form the basis for future contracts) on September 3, 1999. In response to extensive commentary by the NPHA and others, the NPS modified both documents in some respects, but refused to address many of their most serious flaws. The final versions of the Regulations and model contract were published in April and May 2000, respectively. *See* ¶ 3, *supra.*

28. In the guise of "interpreting" the 1998 Act, the NPS adopted untenable positions on a number of issues critical to the concessions industry (*see* ¶¶ 38-102, *infra*) including persisting in following policies that Congress considered and rejected in enacting the 1998 Act. The NPS's attempt to expand its power over concessioners and ignore their vested rights will harm not just current concessioners, but also future concessioners and the American public.

The Hamilton Stores Prospectus

29. On October 2, 2000, almost five months after publishing the Standard Concession Contract, the NPS finally issued its first prospectus soliciting bids under the 1998 Act and the agency's implementing Regulations. That prospectus, Contract No. CC-Yell002-70 (the "Hamilton Stores Prospectus") (attached as Exhibit 2), covers the Yellowstone National Park general stores and food services concession currently served by Hamilton Stores, Inc. Hamilton Stores, which is a member of the NPHA, is operating these facilities under a contract issued pursuant to the 1965 Act and has performed all of its requirements under that contract satisfactorily.

30. The contract required by the Hamilton Stores Prospectus is in all relevant respects identical to the final Standard Concession Contract. Like the Regulations and Standard Concession Contract, it contains numerous illegal provisions, in violation of Hamilton Stores' current contract and the 1998 Act, that would deprive Hamilton Stores of its rights and would force it and any other bidder to agree to illegal and unfair terms in order to obtain the concession.

The Antelope Point Prospectus

31. On October 23, 2000, the NPS issued a second prospectus under the 1998 Act, for a new concession operation to be conducted at Antelope Point in the Glen Canyon National Recreation Area (the "Antelope Point Prospectus," Contract No. CC-GLCA007-01, attached as Exhibit 3). Because this prospectus is for a new facility there is no provision for an incumbent concessioner's renewal rights, nor for the calculation of that incumbent's possessory interest. In all other relevant respects, however, the Antelope Point Prospectus is identical to the Hamilton Stores Prospectus and the Standard Concession Contract, and is thus further confirmation of the NPS's decision systematically to undermine the rights of concessioners.

Future 1998 Act Prospectuses

32. Based on the Regulations, Standard Concession Contract, Hamilton Stores Prospectus, and Antelope Point Prospectus, the NPS has made clear that no future prospectuses will honor concessioners' contractual preferential rights of renewal. The NPS has also made clear that all new prospectuses will violate a substantial number of concessioners' other rights, as well as the clear terms of the 1998 Act.

33. At least one concessioner has therefore brought litigation challenging the Regulations and Standard Concession

Contract and seeking to obtain injunctive relief barring the issuance of a new prospectus for a specific concession. *See Amfac Resorts, L.L.C.* v. *U.S. Dept. of the Interior*, No. 1:98CV01734; *Amfac Resorts, L.L.C.* v. *U.S. Dept. of the Interior*, No. 1:00CV02838.

34. The NPHA, as the association representing almost all concessioners, seeks similar relief that would be more generally applicable to all concessioners and all prospectuses. Given the harm that the NPS's interpretation is causing concessioners, no good reason exists for further delay before challenging the NPS's unlawful interpretation of the 1998 Act and of contracts issued pursuant to the 1965 Act.

SPECIFIC ALLEGATIONS

35. The NPHA's specific challenges cover many aspects of the relationship between concessioners and the NPS: the rules by which new concessioners will be chosen, the rules governing how such concessioners will be treated during the period of concessions contracts (which rules will materially impact what concessioners will bid on such contracts), and the rules governing how incumbent concessioners' possessory interests or leasehold surrender interests will be calculated and when those interests will be paid to incumbents.

36. The Regulations, as well as the contractual implementation of those Regulations as evidenced by the Standard Concession Contract and the Hamilton Stores and Antelope Point Prospectuses, violate the 1998 Act in numerous ways as delineated below. In addition, the Regulations, both on their face and as applied, invade existing contractual rights of incumbent concessioners preserved by the 1998 Act. They are thus arbitrary, capricious, an abuse of the agency's discretion, and otherwise unlawful.

37. The Standard Concession Contract and the Hamilton Stores and Antelope Point Prospectuses also violate the 1998 Act, and among other things deny Hamilton Stores and other

incumbent concessioners the preferential right of renewal that they are entitled to by law. Thus, the Standard Concession Contract and all current and future NPS prospectuses based on it are arbitrary, capricious, an abuse of the agency's discretion, and otherwise unlawful.

* * *

OPERATION OF CONTRACTS

61. In its Regulations, Standard Concession Contract, and Hamilton Stores and Antelope Point Prospectuses the NPS has imposed improper conditions on the performance of concession contracts and on the avenues through which disputes concerning those contracts must be resolved. These final agency actions are arbitrary, capricious, and contrary to law.

62. The manner in which the NPS deals with its concessioners is a significant factor in how much concessioners (whether incumbent or otherwise) will bid for concessions contracts. This Court should therefore declare the Regulations to be arbitrary, capricious, and unlawful and enjoin the NPS from issuing new prospectuses that would operate under this scheme.

Applicability Of The Contract Disputes Act

63. The NPS has decreed that "[c]oncession contracts are not contracts within the meaning of * * * the Contract Disputes Act [41 U.S.C. § 601 *et seq.* ("CDA")]." 31 C.F.R. § 51.3. There is no basis for this attempt to exempt concessions contracts from the CDA, thus rendering the Regulations arbitrary, capricious, and contrary to the terms of the CDA.

64. The CDA applies to "any express or implied contract * * * entered into by an executive agency for (1) the procurement of property, other than real property in being; (2) the procurement of services; (3) the procurement of construction, alteration, repair or maintenance of real property; or (4) the disposal of personal property." 41 U.S.C. § 602(a).

65. The CDA creates fair dispute resolution procedures for contracts with federal agencies. Among other provisions, the CDA mandates that certain agency decisions about contracts be appealable to the Court of Federal Claims, 41 U.S.C. § 609(a)(1), which must review questions of law *de novo*, 41 U.S.C. § 609(a)(3).

66. Concessions contracts under the 1998 Act are covered by the CDA. The CDA applies "notwithstanding any contract provision, regulation, or rule of law to the contrary." 41 U.S.C. § 609(a)(1). The NPS is contracting to procure the provision of services by concessioners, to guarantee the availability of lodging, food and other amenities within the National Park system. The NPS also is procuring the maintenance of its property, because the concessioner does not acquire title to any structure it creates on National Park system lands under a 1998 Act contract. Furthermore, under those concessions contracts where the NPS chooses to require the concessioner to make significant capital improvements, the NPS is procuring the "construction, alteration, repair or maintenance" of that property.

67. The applicability of the CDA to concession contracts is important to concessioners because NPS concession contracts are of lengthy duration, often require significant up-front financial commitments, and by their terms provide the agency with broad unilateral discretion to alter many aspects of those contracts over time. The unlawful decision by the NPS to exempt itself from the CDA is thus of great importance to the contract solicitation process.

* * *

INJUNCTIVE RELIEF

103. The NPHA is entitled to preliminary injunctive relief because it can show a likelihood of success on the merits, and both the public interest and a balancing of the potential

harms weigh in favor of preserving the status quo and preventing the NPS's unlawful implementation of the 1998 Act.

104. The NPHA is also entitled to injunctive relief because there is no adequate legal remedy for the claims asserted herein. Unless enjoined preliminarily and permanently, defendants' actions and conduct will bring irreparable harm to the NPHA's members as potential bidders and existing concessioners whose preferential rights of renewal and other legal rights are being illegally frustrated by unlawful government agency action. The NPS's final actions – as set forth in the Regulations, Standard Concession Contract, Hamilton Stores Prospectus, and Antelope Point Prospectus – will also injure the public's interest in an orderly continuation of services in the country's national parks.

105. To preserve the rights of concessioners and the public interest, the Court should permanently enjoin the NPS from issuing prospectuses that fail to recognize incumbent concessioners' preferential right of renewal and that embody the arbitrary, capricious, and otherwise illegal policies and provisions described above.

COUNT I

(The Regulations Violate The Administrative Procedure Act)

106. Paragraphs 1-105 are incorporated herein as if set forth in full.

107. Under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, a reviewing court has a duty to "hold unlawful and set aside" agency action found to be any of the following: (1) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" (2) "contrary to constitutional right, power, privilege, or immunity;" (3) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;" and (4) "unsupported by substantial evidence." 5 U.S.C. § 706(2).

108. The NPS's "Concession Contracts" Regulations, 65 Fed. Reg. 20630 (Apr. 17, 2000), 36 C.F.R. pt. 51, must be held unlawful and set aside because they violate the 1998 Act, the ADRA, the CDA, and other statutory mandates in the numerous ways delineated above.

COUNT II

(The Standard Concession Contract Violates The Administrative Procedure Act)

109. Paragraphs 1-105 are incorporated herein as if set forth in full.

110. Under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, a reviewing court has a duty to "hold unlawful and set aside" agency action found to be any of the following: (1) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" (2) "contrary to constitutional right, power, privilege, or immunity;" (3) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;" and (4) "unsupported by substantial evidence." 5 U.S.C. § 706(2).

111. The Standard Concession Contract is plainly intended by the NPS to embody the exact terms and conditions of future prospectuses under the 1998 Act. Not only is the Standard Concession Contract consistent with the Regulations, but the Hamilton Stores Prospectus and Antelope Point Prospectus are also in all relevant respects identical to the Standard Concession Contract.

112. The Standard Concession Contract must be held unlawful and set aside, because (as delineated above) it contains numerous terms that violate the 1998 Act, the 1965 Act, other statutory mandates, and contractual obligations of the agency under its existing contracts with concessioners.

COUNT III

(The Standard Concession Contract Violates The Tucker Act)

113. Paragraphs 1-105 are incorporated herein as if set forth in full.

114. Under the Tucker Act, 28 U.S.C. § 1491, a reviewing court has a duty to "afford any relief that the court considers proper, including declaratory and injunctive relief except that monetary relief shall be limited to bid preparation and proposal costs" (28 U.S.C. § 1491(b)(2)), if agency action related to the "solicitation * * * for bids or proposals for a proposed contract or to the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement" (28 U.S.C. § 1491(b)(1)) is found to be any of the following: (1) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" (2) "contrary to constitutional right, power, privilege, or immunity;" (3) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;" and (4) "unsupported by substantial evidence" (28 U.S.C. § 1491(b)(4) (incorporating the APA standard)).

115. The Standard Concession Contract is plainly intended by the NPS to embody the exact terms and conditions of future prospectuses under the 1998 Act. Not only is the Standard Concession Contract consistent with the Regulations, but the Hamilton Stores Prospectus and Antelope Point Prospectus are also in all relevant respects identical to the Standard Concession Contract.

116. The Standard Concession Contract must be held unlawful and set aside, because (as delineated above) it contains numerous terms that violate the 1998 Act, the 1965 Act, other statutory mandates, and contractual obligations of the agency under its existing contracts with concessioners.

* * *

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, plaintiff requests that the Court:

A. Enter preliminary injunctive relief pending final resolution of this matter barring the defendants, their officers, employees and agents, from implementing or enforcing any of the unlawful aspects of 36 C.F.R. pt. 51 and of the Standard Concession Contract, and in particular barring them from proceeding with the Hamilton Stores and Antelope Point Prospectuses.

B. Grant a preliminary and permanent injunction enjoining defendants from issuing new prospectuses that infringe on the rights of incumbent concessioners in any of the ways described in this Complaint.

C. Enter a declaratory judgment that defendants' promulgation of 36 C.F.R. pt. 51, the Standard Concession Contract, the Hamilton Stores Prospectus, and the Antelope Point Prospectus were in the respects described above arbitrary, capricious, contrary to constitutional right, power, privilege or immunity, in excess of statutory jurisdiction, authority or limitations, contrary to concession contracting laws and regulations including but not limited to the 1998 Act, an abuse of discretion, and otherwise not in accordance with law.

D. Enjoin the defendants to develop a constitutional procedure for the appeal from determinations of whether a concessioner's performance was satisfactory.

E. Order such other and further relief as the Court deems appropriate.

Respectfully submitted,

/s/
Kenneth S. Geller (DC Bar # 401130)
David M. Gossett (DC Bar # 468390)
MAYER, BROWN & PLATT
1909 K Street, NW
Washington, DC 20006
Tel: 202-263-3000
Fax: 202-263-3300
Counsel for Plaintiff National Park Hospitality Association

Dated: December 1, 2000

APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. 02-196

NATIONAL PARK HOSPITALITY ASSOCIATION,

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, *ET AL.*,

Respondents.

November 12, 2002

The petition for a writ of certiorari is granted.

APPENDIX E

PROSPECTUS
Accommodations, Facilities and Services,
South Rim, Grand Canyon National Park
National Park Service

[This table of contents has been added to indicate which sections of the Prospectus are included in this Joint Appendix, and on which page each included section starts]

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7. Sample Operating Schedule ..... *omitted*
8. Concessioner's Financial Information ..... *omitted*
9. Existing Contract ..... *omitted*
10. Agreement for Determining the Value of the Possessory Interest in Certain Improvements under NPS Concession Contract No. CC-GRCA001-69; Statement of Value ..... *omitted*
11. Reclaimed Water Agreement ..... *omitted*
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PROSPECTUS
South Rim Accommodations, Facilities and Services
CC-GRCA001-01

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Principal factor 1. The responsiveness of the Proposal to the objectives, as described in the prospectus, of protecting, conserving and preserving resources of the park area.

Principal factor 2. The responsiveness of the Proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates.

Principal factor 3. The experience and related background of the Offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract.

Principal factor 4. The financial capability of the Offeror to carry out its proposal.

Principal factor 5. The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director (However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.)

SECONDARY SELECTION FACTORS

Secondary factor 1. The quality of the Offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling.

Secondary factor 2. The quality of the Offeror's proposal to provide needed employee housing and to adaptively convert existing housing to guest lodging.

Secondary factor 3. The quality of the Offeror's proposal to conduct its hiring, training and retention program for employees in such a way that furthers its ability to provide exemplary customer service beyond the basic requirements of the draft contract.

APPENDICES

1. National Park Service and Its Mission; Concession Program Management

2. Public Law 105-391 Title IV: National Park Service Concessions Management Improvement Act of 1998.
3. 36 CFR, Part 51: Concession Management Regulations.
4. 2001 NPS Management Policies, Chapter 10: Commercial Visitor Services.
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23. Grand Canyon National Park map brochures and newspaper

* * *

BUSINESS OPPORTUNITY

South Rim Accommodations, Facilities and Services
CC-GRCA001-01

This Prospectus describes the existing business and the business opportunity to operate Accommodations, Facilities and Services on the South Rim and at Phantom Ranch in Grand Canyon National Park in general terms. Potential Offerors are responsible for reviewing all sections of this prospectus and specifically the terms and conditions of the attached Draft Contract, including its exhibits, to determine the full scope of a concessioner's responsibilities under the new contract.

All interested parties must apply using the guidelines in the Proposal Instructions and Package.

CURRENT OPERATIONS

All facilities and services to be authorized by the National Park Service (NPS) under this contract are located on the South Rim of Grand Canyon National Park.

Grand Canyon National Park is a World Heritage Site. Grand Canyon National Park attracts 4.5 to 4.9 million visitors a year, with most visitation occurring from March to October. Visitation ranges from over 150,000 to 650,000 per month. Approximately 40% of the park's visitors are from outside the United States, from locations around the world.

The National Park Service has determined that certain visitor services and facilities are necessary and appropriate to enhance visitors' enjoyment of the park, while ensuring that resources are protected. A number of major concession contracts currently exist in Grand Canyon National Park, of which this is the largest:

- Amfac Resorts, LLC, dba Grand Canyon National Park Lodges, provides overnight lodging, food service, transportation, gift shops, public showers, public

laundries, kennels, a service station and mule operations on the South Rim and at Phantom Ranch.

- TW Recreational Services, Inc., a subsidiary of Amfac Parks and Resorts, Inc., provides overnight lodging, food service and gift shops on the North Rim.
- Delaware North Parks Services operates Canyon Village Marketplace, a general store including groceries, camping supplies and deli, on the South Rim.
- Verkamps, Inc. provides a gift shop on the South Rim.
- Grand Canyon Trail Rides provides guided mule and horse rides on and from the North Rim.
- A number of concessioners provide guided river running trips on the Colorado River.

In addition, approximately 350 operators provide road tours, guided backpacking, guided day hikes, outfitting, locksmith services and horseback rides under other authorizations.

Staffing at Peak Season

- National Park Service staff consists of approximately 325 full-time employees, and 100 less-than-full-time and seasonal employees.
- Amfac Resorts, LLC, dba Grand Canyon National Park Lodges, has approximately 900 full-time staff and 300 seasonal employees.
- In total, approximately 2500 people live year-round, and another 1000 live seasonally, on the South Rim of the Grand Canyon. In addition, about 500 more people live in the gateway community of Tusayan.

National Park Service and Amfac Resorts, LLC administrative offices are located on the South Rim of Grand Canyon National Park. Year-round services include a K-12 school, medical clinic, post office, bank, general store, church, day care and recreation center.

Many permanent employees reside in the village year-round. Housing in gateway communities is extremely limited. The closest communities with viable housing markets are Williams, Arizona, 60 miles away, and Flagstaff, Arizona, 85 miles away.

The Current Contract

The current contract expires on December 31, 2001. The Director, pursuant to 36 CFR Part 51, has determined that this is not a qualified concession contract, because it is anticipated that receipts in the first year of the new contract will exceed $500,000, and the new concession contract will not solely authorize or require guide services. Therefore no preferred Offeror for this contract exists.

Facilities

The condition of the facilities varies. Additional employee housing is a critical need. The Exhibits to the Draft Contract, which are part of this document, describe the buildings and land assigned and the trails to be used.

The new concessioner will be assigned lands and facilities in Grand Canyon National Park necessary for the operation, and will be required to maintain the lands and facilities in a manner acceptable to the NPS. Specific operating and maintenance requirements are detailed in the Operating and Maintenance Plans, Exhibits B and H to the Draft Contract.

THE BUSINESS TO BE OPERATED

This business operates facilities and services for visitors to Grand Canyon National Park, principally at three developed areas along the South Rim: Hermits Rest, Grand Canyon Village, and Desert View. It also provides facilities and services at Phantom Ranch, near the Colorado River. This business also includes transportation services and mule livery.

Most of the facilities are open 7 days a week, 12 months a year.

A. Facilities and Services at Beginning of Contract

1. Overnight Accommodations

Overnight Accommodations	Number of Rooms	Lodging Type
El Tovar Hotel	78	Deluxe hotel rooms
Kachina/Thunderbird Lodges	104	Deluxe motel rooms
Bright Angel Complex	39	Rustic rooms
Bucky/Powell Motel (with and without bath)		
Historic cabins	35	Mid-scale cabins
Rim Cabins	15	Deluxe cabins
Maswik Complex		
Maswik Lodge North	160	Mid-scale motel rooms
Maswik Lodge South	90	Economy motel rooms
Maswik Quad Cabins	28	Economy cabins
Yavapai Complex		
Yavapai East	198	Mid-scale motel rooms
Yavapai West	160	Economy motel rooms
Phantom Ranch		
Cabins without bath	11	Rustic cabins
Dormitories (10-person, same gender occupancy)	4	Rustic dormitories

Rustic rooms and cabins are adequately furnished to complement their historic role in park accommodations. They have bathrooms & showers located in close proximity. Some may have private bathrooms.

Economy Rooms and Cabins are adequately furnished with average quality motel furnishings to complement park themes. They have private bathrooms.

Mid-scale accommodations are adequately furnished with above average furnishings to complement park themes. All

accommodations in this price range have private bathrooms. Daily housekeeping service is provided.

Deluxe accommodations are located in or near full service hotels or lodges and are adequately furnished with the highest quality resort-type furnishings to complement park themes. They may have small refrigerators, fireplaces or sitting rooms. Daily housekeeping service and special amenities are provided.

2. Food and Beverage Service

a. Food Service

Location	Seats	Meals served	Type of dining
El Tovar Hotel	250	B,L,D	Gourmet/Fine Dining Restaurant
Arizona Room	120	L,D	Dinner Only
Bright Angel Dining	120	B,L,D	Full Service Coffee Shop
Bright Angel Fountain	0	Snacks	Limited Snack Bar
Maswik Cafeteria	395	B,L,D	Cafeteria
Yavapai Cafeteria	475	B,L,D	Cafeteria
Phantom Ranch	44	B,D, box lunches	Rustic Family Service
Desert View Trading Post	30	B,L,D	Snack Bar
Hermits Rest	0	Snacks	Limited Snack Bar

b. Lounge Service
- El Tovar Hotel 72 seats
- Arizona Steakhouse 20 seats
- Bright Angel Lodge 80 seats
- Maswik Lodge 78 seats

c. Transportation/Visitor Information Desks
-- Bright Angel Lodge
-- Yavapai Lodge
-- Maswik Lodge

3. General Merchandise
   - El Tovar Gift Shop and News Stand
   - Bright Angel Lodge Gift Shop
   - Maswik Lodge Gift Shop
   - Yavapai Lodge Gift Shop
   - Desert View Trading Post Gift Shop
   - Desert View Watchtower Gift Shop
   - Hermits Rest Gift Shop
   - Lookout Studio Gift Shop
   - Hopi House Gift Shop
4. Transportation Services
   - Scheduled In-Park Bus Tours (to sunset when Transportation Contract is implemented)
   - Step-on Guide Services (to sunset when Transportation Contract is implemented)
   - 24-hour Taxi Service
5. Automobile Services
   - Desert View Service Station
   - 24-hour Tiltbed Towing Service with road-side repair service
   - Locksmithing services
   - 24-hour Credit Card fueling access at Desert View Service Station
6. Mule Operations
   - Plateau Point Mule Rides
   - Phantom Ranch Mule Rides
   - Transport of soft-sided luggage to and from Phantom Ranch (Duffel Service)
   - Emergency evacuation of visitors from the inner canyon by mule (Dragout Service)
7. Kennels for cats and dogs (may sunset when the Transportation Contract is implemented)
8. Camper Services
   - Laundromat

   - Showers
9. Trailer Village
   - RV campground — 70 sites
   - Long term Trailer Village for NPS, Concession and Cooperator Employees only – 86 sites
   - Long term Trailer Village for NPS, Concession and Cooperator Employees only at Pinyon Park – 39 sites
10. Off-site Reservation System for all applicable services. This system will utilize a toll-free number.
11. Other
    - Vending (as defined by NPS)
    - Interpretive Programs
    - Concierge Services
    - Pay Phones
12. Support Services
    - Employee Housing and Meals
    - Employee Shuttle
    - Community Services

Basic Financial Information

Approved rates for 2000 are located in Appendix 6. Rates to the public are subject to approval by the National Park Service, under 16 U.S.C. 5955. Rates may be changed at the request of the concessioner subject to approval by NPS under 16 U.S.C 5955.

Historically, this business has been consistent from year to year in its reported revenue. Further financial information and use rates are available in Appendix 8, Financial Information.

The Proposal Package requires Offerors to develop financial projections based upon the business to be operated and the projects required. Offerors should be appropriately cautious in the use of historical information. The National Park Ser-

vice will not provide financial predictions; therefore, Offerors are responsible for producing their own pro forma financial statements and relying on their own financial predictions.

FUTURE OPERATIONS

In August of 1995, the National Park Service completed a new General Management Plan for Grand Canyon National Park. This plan outlines significant changes that will improve and enhance visitors' enjoyment as well as their understanding of this spectacular environment. Such changes are both physical and philosophical. During the term of this contract, some of these changes will be implemented, and the concessioner's operations will be affected accordingly.

- Day visitors will enter and move about the Grand Canyon Village Area by means of new transportation and trail systems. Private vehicles will continue to be permitted on East Rim Drive and at Desert View.
- The anticipated implementation date for the transportation service change is January 1, 2004.
- A Heritage Education Campus will be established in the powerhouse area of the historic South Rim village. The concessioner will vacate its currently occupied historic structures in the heart of Grand Canyon Village, and will renovate and relocate its warehousing and maintenance functions to a complex that presently houses the park's NPS Maintenance shops, after the NPS completes construction of its new maintenance buildings (est. completion date 12/31/02). At that time, the fueling tanks currently owned by the NPS and used by the concessioner will be assigned to the concessioner.

At any time after December 31, 2004, the National Park Service may withdraw transportation and kennel services from this Contract and compete them as a separate business opportunity.

Copies of the Grand Canyon General Management Plan are available on the Internet at http://www.nps.gov/grca/gmp/-index.htm.

In addition, in its reservation system, the concessioner will implement a toll-free number. All reservation services, group sales and marketing operations will be located outside the park.

Building and Improvement Program

Particular projects are identified in Section 9 of the Draft Contract, including the timing and anticipated expenditures of each project. Each project is subject to environmental and cultural compliance.

Some facilities changes at the South Rim called for by the General Management Plan will also be realized through the requirements listed in Section 9 of this Draft Contract.

Project costs

The projects identified here in general terms represent the greater part of an Improvement Program to be carried out by the concessioner and estimated by the NPS to total approximately $8.5 million. Each Offeror should make its own determinations as to the probable cost of implementing the construction requirements identified in the Improvement Program in Section 9 of the Draft Contract.

The estimate prepared by the NPS is a "Class C" conceptual cost estimate based on square foot costs of similar construction, or on identifiable known unit costs of similar construction items. Class C estimates are usually prepared before a fully defined scope of work has been developed. They consider such factors as job location, unusual site conditions, sources of materials and supplies, and the availability and skills of local labor pools. Class C estimates are used to establish a logical expectation of the costs associated with a

future project by assessing the known costs of similar past projects.

Transportation

This Draft Contract prohibits the practice of using park lands as a base of operations for transportation services conducted outside the park, as was done in the past.

Taxi service will be permitted to serve Tusayan as well as areas within the South Rim.

Environmental Management

The new concessioner will develop, document, implement, and comply fully with a comprehensive written Environmental Management Program (EMP) to achieve Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of the contract. A proposed updated EMP will be submitted for approval annually. (See Draft Contract, Section 6).

The annual EMP will describe how the concessioner will comply with the EMP and how the concessioner will self–assess its performance under the EMP. The self-assessment should ensure the concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the concessioner to correct any deficiencies identified by the self-assessment.

Utilities

Water, sewage disposal, solid waste removal and recycling are provided by the park. The NPS charges the concessioner for these services. All other utilities are provided directly by utility companies.

PROPERTY OWNERSHIP AND PURCHASE

The existing concessioner has, under the terms of its existing contract, certain rights to monetary compensation in the event it is not selected as the new concessioner for the new concession contract.

This compensation relates to possessory interest in real property improvements and to personal property of the existing concessioner, or both. The compensation for possessory interest has been fixed at $165,000,000 through binding arbitration.

It is the obligation of any Offeror selected as a new concessioner to pay the $165,000,000 possessory interest compensation to the existing concessioner in accordance with the terms of the existing contract. The existing contract is found in Appendix 9. In light of the fact that the value of the possessory interest has been determined through binding arbitration, the new concessioner will be required to compensate the existing concessioner for its possessory interest no later than December 31, 2001.

Personal Property

Any Offeror that is selected as the new concessioner is obliged to purchase certain personal property of the current concessioner, under the provisions of the existing contract, which is included in Appendix 9.

Offerors are solely responsible for ascertaining the personal property which must be purchased and its condition. The purchase price of personal property must be estimated by the offeror. The fact that the final purchase price may be greater than estimated by an offeror will not be grounds for adjustment of the terms of the contract or other relief to the new concessioner.

Estimate of Value

The value of the existing concessioner's personal property and equipment is estimated by the NPS to be approximately $9,000,000.

EFFECTIVE DATE OF NEW CONTRACT

The effective date of the new contract will be January 1, 2002.

FRANCHISE FEES

The minimum franchise fee for the new contract is 3.8% of annual gross receipts. However, Offerors may propose a higher minimum franchise fee in accordance with the terms of the prospectus.

SITE VISITS

If an on-site tour of the facilities is desired, it will be conducted on May 15, 2001. Such requests should be directed to Ms. Laura Shearin no later than May 1, 2001: (520) 226-0169.

Refer to Appendix 1 for an explanation of the NPS concession management system and practices.

THE PARK AREA AND ITS MISSION

South Rim Accommodations, Facilities & Services
CC-GRCA001-01

DESCRIPTION OF PARK

Grand Canyon National Park is located in the northwest corner of the State of Arizona in Coconino County, encompassing approximately 1,218,375 acres of public land on the southern end of the Colorado Plateau. Its scenic vistas attract visitors from all over the world.

A 277-mile stretch of the Colorado River runs through the park. The exposed geologic strata of the canyon rise over a mile above the river, providing one of the world's most complete records of geological history.

The elevational diversity of Grand Canyon results in significant climatic variations and biological diversity, reflected in life zones ranging from the arid lower Sonoran Desert to those typical of forested regions in Canada. Steep canyon walls admit limited sunshine to the canyon's floor during the winter, giving cold nights and cool days. Spring and fall feature cool nights and mild days. Summer nights are warm, while days are hot, usually well over 100 degrees Fahrenheit. Except for seasonal thunderstorms, usually in July and August, the area is very dry. Snowfall is occasionally recorded in the winter.

The South Rim of the Grand Canyon attracts visitors yearround, although most visitation occurs from March to October. Visitors to the Grand Canyon come from all over the world, with substantial numbers of visitors from Japan, Germany, and France.

Almost five million recreational visits are recorded in the park each year, primarily on the South Rim. The public has traditionally used the park for sightseeing, hiking, river rafting, camping, touring, and general recreation. The scientific

community has also utilized the park extensively for many fields of research.

In recognition of its globally significant values, Grand Canyon National Park has been designated as a World Heritage Site.

Park Headquarters Location

Park Headquarters is located in the community of Grand Canyon, Arizona, on the park's South Rim, 60 miles west of Cameron, Arizona, via Arizona State Route 64; 60 miles north of Williams, Arizona, via Arizona State Route 64; and 85 miles northwest of Flagstaff, Arizona, via U.S. Highway 180.

Legislated Purpose and Significance of Park

On January 11, 1908, President Theodore Roosevelt reserved land in the Grand Canyon of Arizona as the Grand Canyon National Monument by presidential proclamation. In his proclamation, President Roosevelt stated that the Grand Canyon of Arizona "is an object of unusual scientific interest, being the greatest eroded canyon in the United States, and it appears that the public interest would be promoted by reserving it as a National Monument" (Proclamation No. 794).

On February 26, 1919, Congress dedicated and set apart Grand Canyon National Park "as a public park for the benefit and enjoyment of the people" (Grand Canyon National Park Establishment Act, 40 Stat 1175).

Over the years the park has been enlarged and its boundaries revised, most recently on January 3, 1975, when Congress recognized "that the entire Grand Canyon, from the mouth of the Paria River to the Grand Wash Cliffs, including tributary side canyons and surrounding plateaus, is a natural feature of national and international significance" (Grand Canyon National Park Enlargement Act, Public Law 93-620). In this act, Congress also recognized the need for "further protection and

interpretation of the Grand Canyon in accordance with its true significance."

These legislative statements, in addition to the NPS Organic Act, as amended, effectively provide the foundation upon which park management is based. Management seeks to protect the natural and cultural resources of the park, while providing for "the benefit and enjoyment of the people" through resource-based interpretive programs and appropriate public and concessions facilities.

Compliance with Federal, State, and Local Laws and Park Jurisdiction

Grand Canyon National Park operates under the jurisdiction of the federal government. The park has concurrent jurisdiction with the State of Arizona.

Law enforcement is conducted by National Park Service (NPS) Rangers holding federal law enforcement commissions. These officers enforce Federal and state laws through the Act of June 25, 1948, the Assimilative Crimes Act. County and state law enforcement officers enter the park to enforce local and state law. The park has a memorandum of understanding, describing these law enforcement and mutual aid relationships, with the neighboring police department

Public health codes are prescribed by the United States Public Health Service (USPHS), and inspections are conducted in accordance with those codes. The USPHS inspects and supervises the operation of the park's water supply and sewage disposal systems.

National building codes apply to all construction and rehabilitation projects, except where state code is more stringent, in which case state code is applied. Construction may be undertaken only after the NPS issues a letter or permit to proceed and approves the plans involved.

Although operations are conducted on federal property, the concessioner is subject to state and local laws and ordinances in the same manner as if it operated outside of the federal holding. Business permits normally required must be secured, and taxes normally payable must be paid.

Fire Protection

Fire protection is provided to in-park structures by a volunteer fire department composed of NPS, concessioner and cooperator members under NPS direction. Amfac Resorts, LLC has maintained its own fire engine as part of that system. Grand Canyon National Park and Amfac Resorts, LLC work together to provide fire suppression to park structures.

Park Management Structure

Grand Canyon National Park is administered by its Superintendent, who is assisted by a staff of approximately 325 permanent and 100 seasonal personnel.

Many issues can be reviewed and decided at the park level; others, however, require review and/or approval at the regional or Washington level, and some require a process of public review prior to decision.

The Superintendent manages the total park operation, including concession operations. The Superintendent carries out the policies and directives of the NPS, including management of concessioners. Through NPS representatives, the Superintendent reviews, supervises, and coordinates concession activities related to Grand Canyon National Park.

Monitoring concession contract compliance includes oversight of all aspects of the concessioner's activities, including, without limitation, evaluating all concession operations and services, reviewing business operations, reviewing and authorizing all rates and operating seasons/hours, improvements to facilities, and construction.

The Management Assistant coordinates legislative and congressional affairs, partnerships and public affairs. The Public Information Officer, who works for the Management Assistant, coordinates public affairs, special events, VIP visits, informational briefings, and directs the park's commercial filming program. Both coordinate activities directly with the Concessioner.

The Chief, Concessions Program Management, (Chief) coordinates the functions of other NPS divisions relating to concession operations. The Chief makes recommendations on all aspects of the Concessioner's operation to the Superintendent. The Chief ensures necessary evaluations and inspections are performed, including those required by the United States Public Health Service (USPHS), Park Risk Management Officer, Structural Fire Program, Environmental Management Program and the Concessioner Review Program. The Chief ensures all Concessioner rates are approved based upon current comparability studies or applicable guidelines. The Chief acts as liaison between the Concessioner and Superintendent.

To support the Chief, Concessions Program Management, Concessions Management Specialists review and coordinate the Concessioner's day-to-day activities. They develop prospectuses and contracts. They review and evaluate operational and maintenance activities; rate, service, and schedule changes; equal employment opportunity and affirmative action plans; advertisements; construction proposals; environmental management; annual financial reports; insurance coverage; and any other contract requirements.

The Park Sanitarian monitors food and beverage services, grocery stores, solid waste disposal, water, and waste water systems to ensure adherence to all applicable public health standards.

The Deputy Superintendent supervises and manages the functions of all divisions except concessions, as they relate to the overall park operation.

The Park Risk Management Officer monitors the Concessioner's Risk Management Program to ensure it meets all applicable standards, and conducts an annual review of the Risk Management program.

The Chief Ranger initiates, reviews, supervises, and coordinates the activities of personnel who provide visitor protection functions.

District Rangers and Branch Chiefs serve as the direct line of communication to the Concessioner on matters related to fire management, law enforcement, risk management, prescribed fire, search and rescue, emergency medical services and resource protection. Division personnel may assist with concession operational evaluations and critical item follow-ups.

The Chief of Interpretation acts on behalf of the Superintendent in matters pertaining to interpretation and environmental education. The Interpretive Division works with the Concessions Management Division to evaluate/monitor and provide training as appropriate to Concessioner interpretive activities.

The Chief of Maintenance and Engineering acts on behalf of the Superintendent in matters pertaining to maintenance and supervises the activities of facility managers. The Chief of Maintenance acts on behalf of the Superintendent in matters pertaining to compliance with Applicable Environmental Laws.

Facility Managers and Maintenance Supervisors provide day-to-day supervision over all maintenance activities and operations, including utilities and hazard tree mitigation. They serve as the direct line of communications to the Concessioner on routine maintenance matters.

The Park Architect works directly with the Concessioner on historic preservation, rehabilitation of historic structures and all other construction/design/compliance matters in the park.

The Director of the Science Center acts on behalf of the Superintendent in all matters pertaining to natural and cultural resources management such as air quality monitoring, vegetation management, fish and wildlife management, etc.

The Park Compliance Officer works directly with the Concessioner to ensure compliance with natural, cultural and resource protection requirements.

The Park Curator serves as direct line of communication to the Concessioner about care, treatment and preservation of historic furnishings, decorative arts, etc.

The Chief of Administration acts on behalf of the Superintendent in matters related to fiscal management associated with the Concessioner activities, including billing for payment of franchise fees, utilities, lease fees, quarters rental, and personal services provided by the NPS to the Concessioner.

The Implementation Team Manager acts on behalf of the Superintendent in all matters pertaining to implementation of the General Management Plan, which includes scheduling, planning, review of site plans, design, construction, razing of buildings and restoration. The Team Manager has direct communication with the Concessioner on these matters.

Park Interpretive Themes and Goals

The mission of interpretation is to increase visitor understanding and appreciation of the significance of park resources. Interpretive services provide opportunities for people to forge their own intellectual and emotional connections to the ideas and meanings inherent in the resources of the park.

It is the goal of interpretation that park visitors and the general public understand and appreciate the preservation of parks and their resources for this and future generations.

Primary Parkwide Interpretive Themes for
Grand Canyon National Park

A. The immense and colorful Grand Canyon is valued worldwide as one of Earth's most powerful and inspiring scenic landscapes, offering people enriching opportunities to explore and experience its wild beauty in both vast and intimate spaces.

B. Water is the lifeblood of Grand Canyon—a force of erosion, a sustainer of scarce riparian habitat in a desert environment, a spiritual element for native peoples, a provider of recreation, and a central factor in the exploration, development, and politics of the American West.

C. The Colorado River and erosional forces sculpted the southern edge of the Colorado Plateau to form the Grand Canyon, revealing a beautiful sequence of rock layers that serve as windows into time.

D. Extreme changes in elevation, exposure, and climate in the Grand Canyon support a remarkable range of biotic communities in unusual proximity; a relatively undisturbed ecosystem that allows natural processes to continue, providing sanctuary for present and future life.

E. Grand Canyon remains a homeland and a sacred place to a number of American Indian cultures, a point of emergence to some, offering us an opportunity to consider the powerful and spiritual ties between people and place.

F. Grand Canyon has sustained people materially and spiritually for thousands of years—wider recognition of its value led to its designation as a national park and world heritage site; however, continuing threats to its preservation generate dialogue about our need and responsibility to conserve our local and global environment.

PARK PLANNING DOCUMENTS AND PLANNED IMPROVEMENTS.

Recognizing that increasing visitation was producing strains on park infrastructure and resources, the National Park Service finalized a General Management Plan for Grand Canyon National Park in 1995. This plan is available in its entirety at http://www.nps.gov/grca/gmp/index.htm.

In its objectives for Grand Canyon National Park, the General Management Plan listed the following as desired conditions to be achieved:

International Significance

- Manage the park to preserve its integrity as a world heritage site with natural and cultural resources of national and international significance.

Natural and Cultural Resources

- Preserve, protect, and interpret the park's natural and scenic resources and values, and its ecological processes.
- Preserve, manage, and interpret park cultural resources (archeological, ethnographic, architectural, and historic resources, trails, and cultural landscapes) for the benefit of present and future generations.
- Preserve, protect, and improve air quality and related values such as visibility.
- Manage visitor use, development, and support services to protect the park's resources and values.
- Preserve and protect the genetic integrity and species composition within the park, consistent with natural ecosystem processes.
- To the maximum extent possible, restore altered ecosystems to their natural conditions. In managing naturalized ecosystems, ensure the preservation of native components

through the active management of nonnative components and processes.

- Manage ecosystems to preserve critical processes and linkages that ensure the preservation of rare, endemic, and specially protected (threatened/endangered) plant and animal species.
- Protect the natural quiet and solitude of the park, and mitigate or eliminate the effects of activities causing excessive or unnecessary noise in, over, or adjacent to the park.
- Preserve natural spring and stream flows and water quality. Withdraw only the minimum water necessary to meet park purposes. To the maximum extent feasible, strive to meet increases in water demand by conserving and reusing water.
- Provide opportunities for scientific study and research focused on the Grand Canyon, consistent with resource protection and park purposes.
- Inventory, monitor, and maintain data on park natural and cultural resources and values, and utilize this information in the most effective ways possible to facilitate park management decisions to better preserve the park.
- Clearly delineate and maintain the park boundary to protect park resources and values.
- Identify and evaluate all cultural properties within the park for inclusion on the National Register of Historic Places.
- Collect ethnographic data and develop ethnohistories for the Havasupai, Hopi, Hualapai, Navajo, Southern Paiute, and Zuni peoples concerning their associations with the Grand Canyon, as appropriate, in order to preserve, protect, and interpret park resources and values important to diverse American Indian cultures, including significant, sacred, and traditional use areas.

Wilderness and Wild River Management

- Manage areas meeting the criteria for wilderness designation as wilderness. Actively pursue the designation of these lands as part of the national wilderness preservation system.
- Manage the Colorado River corridor through Grand Canyon National Park to protect and preserve the resource in a wild and primitive condition. Actively pursue the designation of eligible segments of the Colorado River and its tributaries as part of the national wild and scenic rivers system.

Visitor Experience

- Provide a diverse range of quality visitor experiences, as appropriate, based on the resources and values of the Grand Canyon, compatible with the protection of those resources and values.
- Provide access that is appropriate and consistent with the character and nature of each landscape unit and the desired visitor experience.
- Consistent with park purposes and the characteristics of each landscape unit, preserve and protect the maximum opportunities in every landscape unit of the park for visitors to experience the solitude, natural conditions, primitiveness, remoteness, and inspirational value of the Grand Canyon.
- Provide equal access to programs, activities, experiences, and recreational opportunities for individuals with disabilities, as appropriate and consistent with the levels of development and inherent levels of access in areas within the park.
- Provide a wide range of interpretive opportunities and information services to best assist, inform, educate, and challenge visitors.

- Educate and influence the public through positive action to preserve and protect the world they live in, including but not limited to the park.
- Provide a safe, efficient, and environmentally sensitive transportation system for visitors, employees, and residents, consistent with management zoning and resource considerations. Emphasize nonmotorized modes of transportation wherever feasible.
- Develop visitor use management strategies to enhance the visitor experience while minimizing crowding, conflicts, and resource impacts.
- Provide visitor and employee facilities and services, as necessary and appropriate, in or adjacent to areas dedicated to those uses or in appropriate disturbed areas.

Facility Design

- Consistent with its purpose, strive to make Grand Canyon National Park a model of excellence in sustainable design and management through such means as energy efficiency, conservation, compatibility with historic setting and architecture, recycling, accessibility, and the use of alternative energy sources.
- Encourage appropriate use and adaptive reuse of historic structures, while preserving historic integrity.
- Ensure that development and facilities within the park are necessary for park purposes.
- Design high-quality facilities that exemplify visual consistency and appropriateness.
- Ensure that park developments and operations do not adversely affect park resources and environments, except where absolutely necessary to provide reasonable visitor access and experiences.

Regional Issues

- Understand, assess, and consider the effects of park decisions outside the park as well as inside.

- Upon request, work cooperatively to assist local American Indians in planning, developing, and managing lands adjoining the park in a mutually compatible manner.
- Work cooperatively with appropriate entities to encourage compatible, aesthetic, and planned development and recreational opportunities outside park boundaries, and to provide information, orientation, and services to visitors.
- Carry the NPS concern for the environment beyond the boundaries of the park, including the protection of park resources and values from external influences.

South Rim Management Objectives

The South Rim is considered to be bounded on the west by Hermits Rest, on the east by Desert View, on the north by the canyon rim, and on the south by the park boundary. The following objectives for the South Rim are in addition to the overall park objectives.

Visitor Experience

- Identify and develop an appropriate range of visitor experiences, opportunities, and access that will accommodate a variety of visitor expectations, abilities, and commitment levels.
- Provide viewing opportunities of the canyon, access to views and trails, and interpretation and information, recognizing that these are the most important elements of the visitor experience on the South Rim.
- Maintain the South Rim from Hermits Rest to Desert View as the focus for the majority of visitor use in the park, including major visitor facilities and accommodations.

Cultural Resources

- Utilize the extensive cultural resources of the South Rim as a strong component of the interpretive program, including the interpretation of American Indian cultures.

Development

- Develop and promote the use of foot trails, bicycle paths, and public transportation to provide convenient and efficient movement of visitors, employees, and residents within Grand Canyon Village and between major points of interest.
- Maintain and enhance the meandering, rural character of West Rim and East Rim Drives, including the feeling that one is removed from the developments of Grand Canyon Village and Desert View. Maintain the existing large undisturbed areas along West Rim Drive.

Significant Changes Proposed in the General Management Plan

Substantial changes in the transportation system were proposed. Although vehicle restrictions are planned, no limit on the number of visitors is anticipated for the life of the General Management Plan (to the year 2010).

The General Management Plan proposes the following changes for the South Rim of Grand Canyon National Park:

- A transit system will provide transportation for all day visitors to the village area of the South Rim of the Grand Canyon within the term of this contract. Overnight visitors to lodges on the South Rim (except for Yavapai) will park at the Maswik Transportation Center and be shuttled to their lodges. Yavapai overnight visitors will park in the Yavapai area.
- A new visitor information center—the Canyon View Information Plaza—opened in the fall of 2000, and will be a primary hub for the transit system.
- In addition to the expanded transit system, a greenway trail system for pedestrians and bicyclists is proposed from Hermits Rest to Desert View and from the Canyon View Information Plaza to Tusayan.

- The National Park Service will build a new warehouse and maintenance facility for its operations. This project has an estimated completion date of 11/1/02. Administrative and maintenance facilities for the South Rim concessioner will then be relocated to the current National Park Service facilities.
- A "Heritage Education Center" will be established in the historic district, using the historic powerhouse, mule barn, laundry, and other buildings. Five dormitories located in the Village area may be converted to economy lodging.

PARK MANAGEMENT OBJECTIVES FOR CONCESSION SERVICES

The need for commercial visitor services in Grand Canyon National Park is based on objectives for visitor use described in law, planning documents that exist for the park, and the judgment of management considering the way the park is currently used and the present objectives of the NPS.

The NPS has determined that the facilities and services that are called for in this Prospectus are necessary and appropriate to the purposes of Grand Canyon National Park.

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Grand Canyon National Park

South Rim
Accommodations, Facilities and Services

CONCESSION CONTRACT
NUMBER CC-GRCA001-01

_____

[Name of Concessioner]

_____

_____

[Address, including email address and phone number]

Doing Business As

_____

Covering the Period

January 1, 2002 through **December 31, 2011**

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[CORPORATION]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the "Director"), and _____, a corporation organized and existing under the laws of the State of_____ (hereinafter referred to as the "Concessioner"):

[PARTNERSHIP]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, hereinafter referred to as the "Director", and _____, a partnership organized under the laws of the State of_____ , hereinafter referred to as the "Concessioner":

[SOLE PROPRIETORSHIP]

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, hereinafter referred to as the "Director," and, _____, an individual, doing business as _____, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

THAT WHEREAS, Grand Canyon National Park is administered by the Director as a unit of the National Park System to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

WHEREAS, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

WHEREAS, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

WHEREAS, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (Public Law 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

SEC. 1. TERM OF CONTRACT

This Concession Contract No. CC-GRCA001-01 ("CONTRACT") shall be effective as of January 1, 2002, and shall be for the term of 10 (ten) years until its expiration on December 31, 2011.

SEC. 2. DEFINITIONS

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, Federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimina-

tion, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of Grand Canyon National Park.

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.

(e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all Real Property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.

(f) "Days" shall mean calendar days.

(g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners

as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(1) intracompany earnings on account of charges to other departments of the operation (such as laundry);

(2) charges for employees' meals, lodgings, and transportation;

(3) cash discounts on purchases;

(4) cash discounts on sales;

(5) returned sales and allowances;

(6) interest on money loaned or in bank accounts;

(7) income from investments;

(8) income from subsidiary companies outside of the Area;

(9) sale of property other than that purchased in the regular course of business for the purpose of resale;

(10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues

received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.

(m) "Major Rehabilitation" shall have the meaning set forth in Exhibit A to this CONTRACT.

(n) "Possessory Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(o) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.

(p) "Historic Personal Property" is certain personal property owned by the Concessioner that is intrinsic to the historic and cultural values of the area and related concession operations. Some items are, in themselves, artistic, historic or cultural artifacts.

(q) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(r) "Superintendent" means the manager of the Area.

(s) "Visitor Services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by Section 3(a) of this CONTRACT.

SEC. 3. SERVICES AND OPERATIONS

(a) Required and Authorized Visitor Services

During the term of this Contract, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) Required Visitor Services: The Concessioner is required to provide the following visitor services during the term of this Contract:

1. Overnight Accommodations	Number of Rooms	Lodging Type
El Tovar Hotel	78	Deluxe hotel rooms
Kachina/Thunderbird Lodges	104	Deluxe motel rooms
Bright Angel Complex	39	Rustic rooms
Bucky/Powell Motel (with and without bath)		
Historic cabins	35	Mid-scale cabins
Rim Cabins	15	Deluxe cabins
Maswik Complex		
Maswik Lodge North	160	Mid-scale motel rooms
Maswik Lodge South	90	Economy motel rooms
Maswik Quad Cabins	28	Economy cabins
Yavapai Complex		
Yavapai East	198	Mid-scale motel rooms
Yavapai West	160	Economy motel rooms
Phantom Ranch		
Cabins without bath	11	Rustic
Dormitories (10-person, same gender occupancy)	4	Rustic

2. Food and Beverage Service

a. Food Service

Location	Seats	Meals served	Type of dining
El Tovar Hotel	250	B,L,D	Gourmet/Fine Dining Restaurant
Arizona Room	120	L,D	Restaurant
Bright Angel Dining	120	B,L,D	Full Service Coffee Shop
Bright Angel Fountain	0	Snacks	Limited Snack Bar
Maswik Cafeteria	395	B,L,D	Cafeteria
Yavapai Cafeteria	475	B,L,D	Cafeteria
Phantom Ranch	44	B,D, box lunches	Rustic Family Service
Desert View Trading Post	30	B,L,D	Snack Bar
Hermits Rest	0	Snacks	Limited Snack Bar

b. Lounge Service
- El Tovar Hotel 72 seats
- Arizona Room 20 seats
- Bright Angel Lodge 80 seats
- Maswik Lodge 78 seats

c. Transportation/Visitor Information Desks
- Bright Angel Lodge
- Yavapai Lodge
- Maswik Lodge

d. Concierge Services
- El Tovar

3. General Merchandise
- El Tovar Gift Shop and News Stand
- Bright Angel Lodge Gift Shop
- Maswik Lodge Gift Shop
- Yavapai Lodge Gift Shop
- Desert View Trading Post Gift Shop
- Desert View Watchtower Gift Shop

- Hermits Rest Gift Shop
- Lookout Studio Gift Shop
- Hopi House Gift Shop

4. Transportation Services
- Scheduled Bus Tours
- Step-on Guide Services
- 24-hour Taxi Service within South Rim and Tusayan.

5. Automobile Services
- Desert View Service Station
- 24-hour Tiltbed Towing Service with road-side repair service
- Locksmithing services
- 24-hour Credit Card fueling access at Desert View Service Station

6. Mule Operations
- Plateau Point Mule Rides
- Phantom Ranch Mule Rides
- Duffel Service: Transport of soft-sided luggage to and from Phantom Ranch
- Dragout Service: Emergency evacuation of visitors from the inner canyon by mule

7. Kennels for cats and dogs

8. Camper Services
- Laundromat
- Showers

9. Trailer Village
- RV campground — 70 sites

10. Reservation System. In its reservation system, the concessioner will implement a toll-free number.

11. Other
- Limited Vending
- Interpretive Programs

- Community Support
- Pay Phones

At any time after December 31, 2003, the National Park Service intends to withdraw transportation and kennel services from this Contract, upon reasonable notice to the Concessioner, and compete them as a separate business opportunity.

(b) Operation and Quality of Operation

(1) The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(2) The following Support Services are required:

- Employee Cafeteria at Bright Angel Lodge
- Employee Housing
- Long term trailer village for NPS, Concession and cooperator employees only 86 sites
- Long term trailer village for NPS, Concession and cooperator employees only at Pinyon Park – 39 sites
- Employee Shuttle
- Operation of Community Recreation Center

(c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the

Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will ensure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archaeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in

accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

SEC. 4. CONCESSIONER PERSONNEL

(a) Employees

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing within the Area.

(8) The Concessioner shall publis'. a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-

free awareness program to inform employees about the danger of drug abuse in the workplace and the Area; the availability of drug counseling, rehabilitation and employee assistance programs; and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(b) Employee Housing and Recreation

(1) If the Concessioner is required to provide employee housing under this CONTRACT, the Concessioner's charges to its employees for this housing must be reasonable.

(2) If the visitor services required and/or authorized under this CONTRACT are located in a remote or isolated area, the Concessioner shall provide appropriate employee recreational activities.

SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE

(a) Legal, Regulatory and Policy Compliance

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in

employment and providing accessible facilities and services to the public are further described in this CONTRACT.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where to Send Notice

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Grand Canyon National Park
P.O. Box 129
Grand Canyon, AZ 86023
Attention: Chief, Concessions Management

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION

(a) Environmental Management Objectives

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

(b) Environmental Management Program

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner em-

ployees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, a least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The selfassessment should ensure the Concessioner's con-

formance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of Federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for

which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or

threatened release, as set forth in this Section, or any threatened or actual violation, as set forth in this Section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with Section 12 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this Section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this Section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director

deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this Section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(h) Protection of Cultural and Archaeological Resources.

The Concessioner shall ensure that any protected sites and archaeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archaeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archaeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

SEC. 7. INTERPRETATION OF AREA RESOURCES

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpre-

tive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER

(a) Assignment of Concession Facilities

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct Real Property; and

(ii) certain Real Property improvements described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional Real Property improvements

completed in accordance with the terms and conditions of this CONTRACT.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amend Exhibit D to reflect the addition of Real Property improvements completed in accordance with the terms and conditions of this CONTRACT and to reflect the withdrawal of concession facilities as set forth below.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) land or Real Property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(3).

2) Historic Personal Property Provided by the Concessioner. The Concessioner will provide certain existing property of historic or other significance, as described in Exhibit J. This Historic Personal Property is intrinsic to the historic and cultural values of the Area, and may include artistic, historic or cultural artifacts. The Concessioner shall be responsible for maintaining this Historic Personal Property as necessary to keep it in service, available to the public, and in good and operable condition. At the expiration or other termination of this contract, such Historic Personal Property shall be transferred to the successor concessioner, as designated by the Director, upon payment of its book value. In the event any of the items listed in Exhibit J are determined to be part of the realty, they will be transferred to a successor concessioner as part of the realty in accordance with Exhibit A to this CONTRACT.

(3) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this CONTRACT. This Exhibit E will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be transferred to the Director for disposition.

(f) Condition of Concession Facilities

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

(g) Utilities Provided by the Director.

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(h) Utilities not Provided by the Director

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other Federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this CONTRACT for any reason, the Conces-

sioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this Section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS

(a) Construction of Real Property Improvements

The Concessioner may construct or install upon lands assigned to the Concessioner under this CONTRACT only those Real Property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of Real Property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All Real Property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

(b) Removal of Real Property Improvements

(1) The Concessioner may not remove, dismantle, or demolish Real Property improvements in the Area without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a Real Property improvement within the Area shall be the property of the United States.

(3) In the event that an assigned Real Property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

(c) Leasehold Surrender Interest

(1) This CONTRACT hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of this CONTRACT and Exhibit A, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT, including, but not limited to, those Capital Improvements constructed as part of the Concession Facilities Improvement Program and those Capital Improvements which result from the Major Rehabilitation of an existing Real Property improvement. Upon completion of a Major Rehabilitation by the Concessioner, an existing Real Property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation shall be considered as a Capital Improvement for all purposes of this CONTRACT.

(2) This CONTRACT may provide the Concessioner a Leasehold Surrender Interest in Real Property improvements resulting from possessory interest obtained under the terms of a possessory interest concession contract. Exhibit G describes the Real Property improvements, if any, in which the

Concessioner has such a Leasehold Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this CONTRACT.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this CONTRACT except as may be provided in Exhibit A and Exhibit F. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance Reserve described in this CONTRACT, and this CONTRACT does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

(d) Concession Facilities Improvement Program

(1) The Concessioner shall undertake and complete an improvement program (hereinafter "Concession Facilities Improvement Program") costing not more than $8.5 million , as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Labor's CPI-U Index, as published by the Department of Labor.

(2) The Concession Facilities Improvement Program shall include, subject to final decisions to be made after environmental and/or historic compliance:

LOCATION	PROJECT	ESTIMATED COST OF PROJECT	APPROX START DATE
Desert View Employee Housing	12 x 2-bedroom apartments	$1,962,300	Jan-02
Desert View Employee Housing	20 x 1 bedroom apartments	$952,840	Jan-03
South Rim Historic District	Relocate concessioner maintenance facility	$175,000	Jan-02
Desert View Service Station	Renovate structure, enlarge restrooms, convert pumps to 24-hour	$188,000	Jan-02
Desert View Watchtower	Renovation	$817,250	Jan-03
Desert View	Design and construct new Desert View Trading Post	$703,710	Jan-03
Desert View	Demolish existing Desert View Trading Post	$26,808	Jan-03
South Rim Village Historic Area	Remodel auto shop at rear of General Offices	$1,787,880	Jul-04
Bright Angel Lodge	Renovation of Restaurant, Lobby & exterior	$911,050	Jul-05
Bright Angel Lodge	Renovate Buckey O'Neill Suite and Red Horse Cabin	$72,000	Jul-05
South Rim Village Historic Area	Demolish Shirley Hall	$48,000	Jul-05
Hermits Rest	Renovation, including replacement of storage building and septic system	$451,575	Jan-07
NPS Building One	Renovation	$376,640	Jan-07
Total Anticipated Cost		**$8,473,053**	

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program on or before January 1, 2002 in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward. In the event the Concessioner is unable to construct all of the above projects within the $8.5 million budget or certain projects do not gain final approval from the Director, the project list and/or specific projects will be modified or amended as necessary to reflect such changes and the full expenditure of the $8.5 million budget. The amendments will reflect the list above, which is in priority order.

(4) The Concessioner shall complete and have the Real Property improvements available for public use on or before January 1, 2005. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

SEC. 10. MAINTENANCE

(a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

(c) Repair and Maintenance Reserve

(1) The Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, repair and maintenance of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2) Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this CONTRACT from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: one percent (1%) of the Concessioner's gross receipts for the previous month. If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this CONTRACT for default or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director. Failure to expend Repair and Maintenance Reserve Funds when directed by the Director shall be considered as a material breach of this CONTRACT for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this CONTRACT.

(5) Repair and Maintenance Reserve funds shall not be used for a major rehabilitation as defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a conse-

quence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner (subject to otherwise applicable terms and conditions of this CONTRACT).

SEC. 11. FEES

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ **percent** (__%) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset

against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments shall be deposited electronically by the Concessioner using approved National Park Service administrative procedures, as described in the Operating Plan.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published annually in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this Section. For the purposes of this Section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this Section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a

written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this Section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.

(9) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

SEC. 12. INDEMNIFICATION AND INSURANCE

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense,

the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this Section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more

specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit I.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as di-

rected by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit I.

SEC. 13. BONDS AND LIENS

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the

first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner.

SEC. 14. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.

(2) Statements of Reserve Activity. The Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve

for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

SEC. 15. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(b) Environmental Reporting

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on

lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure

period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this CONTRACT. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this Section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

(3) To avoid interruption of services to the public upon termination of this CONTRACT for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to

the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this CONTRACT for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

SEC. 17. COMPENSATION

(a) Just Compensation

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

(b) Compensation for CONTRACT Expiration or Termination

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

(c) Procedures for Establishing the Value of a Leasehold Surrender Interest

At any time during the term of this CONTRACT, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this CON-

TRACT. In the event that such negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this CONTRACT, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

(d) Compensation for Personal Property

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

SEC. 19. GENERAL PROVISIONS

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such

term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this CONTRACT as of the _____ day of _____, _____.

CONCESSIONER

BY_____
(Title)
(Company Name)

[CORPORATIONS]
ATTEST:

BY:
TITLE: _____
_____

UNITED STATES OF AMERICA

BY_____
Director
National Park Service

[SOLE PROPRIETORSHIP]
WITNESSES:

NAME _____
ADDRESS _____
TITLE: _____

NAME _____
ADDRESS _____
TITLE: _____

[PARTNERSHIP]
WITNESSES AS TO EACH: [Concessioner]

NAME _____ (NAME)_____
ADDRESS _____

NAME _____ (NAME)_____
ADDRESS _____

* * *

Supplement B-1

GIFT SHOP MISSION STATEMENT

South Rim Facilities, Accommodations and Services
CC-GRCA001-01

Purpose

The purpose of Grand Canyon National Park is based on the legislation establishing the park and the legislation governing the National Park Service (NPS). As a place of national and global importance, Grand Canyon National Park is to be managed to:

- Preserve and protect its natural and cultural resources and ecological processes, as well as its scenic, aesthetic, and scientific values;
- Provide opportunities for visitors to experience and understand the environmental interrelationships, resources, and values of the Grand Canyon without impairing the resources.

The gift shops throughout the park play a primary role in assisting us to meet our management objectives by providing opportunities for visitors to purchase mementos of their park visit, and they serve as an extension of the park's interpretive efforts. The shops will allow visitors to take something of their park experience with them when they leave, by providing gifts and souvenirs that relate to the park and regional resources. The products sold have the potential to provide the visitor pleasant memories of his/her national park experience and further the understanding of preservation and related environmental and cultural values.

Objectives

1. The image of the park and the concessions operations are intertwined. Concessioner employees are prominent in interactions with park visitors, and should exemplify quality and professionalism. The concessioner will con-

tinue its training of retail personnel and other front line staff to be aware of the source, quality and authenticity of merchandise items. Training will also be provided to ensure that employees have a basic knowledge of general park information, and its cultural and natural attributes.

2. To the greatest extent possible, merchandise will have an identifiable relationship to Grand Canyon National Park, its environs, its natural/cultural history and other identified or related topics.

3. Themes have been identified to guide implementation of these objectives. Merchandise that does not relate to the identified themes or related topics will be phased out.

4. Merchandise with interpretive or educational value will be provided prominent display in gift shops.

5. Handcraft items representing park and regional themes will be developed through vendors or otherwise sought. Conversely, handcrafted items from other regions of the United States are not appropriate. Foreign-made merchandise is also discouraged.

6. Informational tagging will be attached to merchandise to assist in illustrating the importance of the merchandise to the park/region.

7. Merchandise representing the identified themes will be available within a broad price range. This will provide all visitors an opportunity to purchase both inexpensive or fine gifts and/or souvenirs. When appropriate fine art should be included within the merchandise inventories.

8. It is the concessioner's responsibility to select sales items that comply with this Mission Statement and general NPS merchandising guidelines. The NPS will not dictate the sale of specific merchandise based on individual tastes, however the National Park Service reserves the right to approve the nature, type, and quality of merchandise to

be offered. It is recognized that developing product lines with vendors, and finding appropriate merchandise will be an on-going process. Therefore, new inventory will be phased in over a period of time. Items that do not sell, regardless of how well they support park themes, may need to be phased out. The park and concessions staff will need to work closely to fine-tune this effort in order to make it beneficial for both entities.

9. These objectives are for gift and souvenir merchandise. It is recognized that the concessioner may also sell other general merchandise (if identified in their contract) which is necessary and appropriate to meet the visitors needs.

Themes

- Hopi House: Certified Native American Handcraft items that represent Native Americans of the Southwest. Special emphasis on historic use of the facility and artisans.
- El Tovar Hotel: First Harvey House at Grand Canyon. The beginning and early era of tourism in the area which should include the train. The Harvey Girl Tours are to be reinstated to compliment this theme.
- Bright Angel Lodge: Human history and development of trails in the park. Appropriate emphasis on Fred Harvey wranglers and mule use in the park. Fred Harvey Company History to compliment the Fred Harvey History Room.
- Lookout Studio: Geology of the area. Inspiration. Post cards, photography, posters, and other art-related items.
- Hermits Rest: Early history of the area which includes the stagecoach destination, trails development (Hermit, Boucher, Hermit Camp). Overall ambience should be that of a resting and gathering place.
- Watchtower: Certified Native American handcrafts that represent Native Americans of the Southwest. The Colo-

rado Plateau, river, and Painted Desert themes are appropriate to this facility. Emphasis on a resting and gathering place in the main kiva room.

- Desert View Trading Post/Maswik/Yavapai: Family oriented shops with general park-related themes that include wildlife, resources, children's educational merchandise, etc. Generally lower range prices at these facilities.
- General: Each historic facility should provide an area that includes educational information on the history of the facility (i.e., who designed, age of facility, historic use, etc.). The display and sales of copies of historic photos are strongly encouraged. These photos should be accompanied by descriptive literature.

* * *

PROPOSAL PACKAGE

CC-GRCA001-01

Department Of Interior
National Park Service
Grand Canyon National Park

Proposal to Operate South Rim Accommodations, Facilities and Services
Within Grand Canyon National Park

Date:
(Prospectus Issued)

DUE DATE: All proposals and any modifications of them must be received at the following address:

National Park Service
Business Resources Division
Intermountain Regional Office
P.O. Box 25287
Denver, CO 80225-0287

12795 W. Alameda Parkway
Lakewood, CO 80228

Phone No. 303/969-2661

No Later Than: _____
By Close Of Business: 4:00 P.M.

The Proposal Letter set forth below indicates your acceptance of the terms and conditions of the concession opportunity as set forth in this Prospectus. It indicates your intention to comply with the required elements of the Contract. The letter must bear original signatures. The NPS will review the entire Proposal Package to determine whether your proposal in fact accepts without condition the terms and conditions of this Prospectus. If not, your proposal may be considered non-responsive, even though you submitted an unconditional Proposal Letter.

If a court of competent jurisdiction determines that any term of the prospectus is unlawful, then any Offeror may withdraw its proposal at any time prior to award of the Contract without penalty and may submit a new proposal in accordance with any amendment to, or resolicitation of, the Prospectus.

PROPOSAL FOR CONCESSION OPERATION

To: Karen Wade, Director
Intermountain Region
P.O. Box 25287
Denver, Colorado 80225

Attention: Business Resources Division (IMDE-CM)

Dear Ms. Wade:

(I) (We) hereby offer to provide visitor services and facilities at Grand Canyon National Park in accordance with the terms and conditions specified in the draft new Concession Contract No. CCGRCA001-01, provided in the prospectus issued by the public notice in the Commerce Business Daily dated _____, and to execute the draft new Cqncession Contract without substantive modification (except as may be required by the National Park Service pursuant to the terms of the prospectus).

(I) (We) are enclosing the required "PROPOSAL" which, by this reference, is made a part hereof. (I) (We) certify that the information furnished herewith is true to the best of (my) (our) knowledge and belief. (I) (We) agree to meet all the minimum requirements of the draft new concession contract, and the prospectus, and that (I) (We) have provided all of the mandatory information specified in the prospectus.

(I) (We) certify in accordance with 43 CFR Part 12 regarding debarment, suspension, ineligibility and voluntary exclusion the following:

Any of the individuals or entities seeking participation in this Concession Contract are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from a public transaction by a federal department or agency.

Within the three years preceding submission of the Proposal, none of the individuals or entities seeking participation in this Concession Contract have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, or for violation of federal or state antitrust statutes or for commission of embezziement, theft, forgery, bribery, falsification of records, making false statements, or receiving stolen property.

None of the individuals or entities seeking participation in this Concession Contract are presently indicted for or otherwise criminally or civilly charged by a federal, state or local unit of the government with commission of any of the offenses.

The individuals or entities seeking participation in this Concession Contract have not had one or more public transactions (federal, state or local) terminated for cause

or default within the threeyear period preceding the submission of the Proposal.

(I) (We), by submitting this Proposal hereby agree, if selected for award of the new concession contract:

1. To the minimum requirements of the prospectus as identified in Part A of this proposal package.
2. To complete the execution of the final Concession Contract within thirty working days after it is presented by the National Park Service.
3. To commence operations under the new concession contract on the effective date of the new concession contract.
4. To acquire the possessory interest of the existing concessioner no later than December 31, 2001 in the amount of $165,000,000.
5. To acquire the personal property of the existing concessioner under the terms of the existing concession contract.
6. To resolve any dispute regarding the value of personal property of the existing concessioner in accordance with the terms of the existing concession contract.
7. To the conversion of the possessory interest held under the existing concession contract to leasehold surrender interest under the terms of the new concession contract in accordance with the applicable provisions of Subpart H of 36 CFR Part 51.

BY _____ DATE_____
(Type or Print Name)
ORIGINAL SIGNATURE _____
TITLE _____
ADDRESS _____
_____

CERTIFICATE OF CORPORATE OFFEROR

(Offerors who are not corporations should skip this certificate)

I, _____, certify that I am the _____ of the corporation named as Offeror herein; that , who signed this proposal on behalf of the Offeror, was then of said corporation; that said proposal was duly signed for and in behalf of the corporation by authority of its governing body within the scope of its corporate powers.

BY:_____
DATE_____
(Type or print name and date)

_____
Original Signature

TITLE _____

ADDRESS_____

_____

PART A

The minimum requirements for the new concession contract are identified in this Part A of the proposal package. If the offeror, in its proposal letter, does not agree to these minimum requirements, the proposal will be considered non-responsive.

PRINCIPAL SELECTION FACTOR 1. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROTECTING, CONSERVING, AND PRESERVING RESOURCES OF THE PARK AREA.

(I) (We) agree to comply with all terms and conditions in the contract, including compliance with all applicable laws, including, without limitation, environmental protection and conservation laws, under the terms and conditions specified in the Concession Contract.

PRINCIPAL SELECTION FACTOR 2. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROVIDING NECESSARY AND APPROPRIATE VISITOR SERVICES AT REASONABLE RATES.

(I) (We) agree to comply with all the terms and conditions specified in the Concession Contract, including its exhibits.

(I) (We) agree to operate at the currently approved rates during the term of the Concession Contract until such time as a new rate schedule is approved by the Secretary, in accordance with 16 U.S.C. 5955. A selected Offeror may request a rate increase at any time after the selection of the best proposal is made by the National Park Service. The last comprehensive rate study for lodging, food and beverage was undertaken in 1995.

(I) (We) agree to accept the Concession Facilities, and any assigned government personal property "as is" as required by the draft Concession Contract, Section 8(f).

(I)(We) agree to carry out the required Concession Facilities Improvement Program according to the terms of the draft Concession Contract, including the time frames established by the Secretary.

(I)(We) agree to accept the "Repair and Maintenance Reserve" described in the draft Concession Contract as it now exists, including the administrative responsibilities associated with the funds.

(I) (We) accept without condition the proposed Maintenance Plan included as Exhibit F of the draft Concession Contract.

(I) (We) accept without condition the Operating Plan included as Exhibit B of the draft Concession Contract.

(I) (We) agree to implement an equal opportunity program and comply with the terms of the Equal Opportunity and handicapped access requirements of the draft Concession Contract.

(I) (We) agree to develop and implement an effective health and safety program (Risk Management Program), according to the requirements of the draft Concession Contract for such programs.

(I) (We) agree to meet the public liability and property insurance requirements of the draft Concession Contract and agree to provide property and liability insurance of at least the types and levels of coverage described in the draft Concession Contract.

PRINCIPAL SELECTION FACTOR 5. THE AMOUNT OF THE PROPOSED MINIMUM FRANCHISE FEE, IF ANY, AND/OR OTHER FORMS OF FINANCIAL CONSIDERATION TO THE DIRECTOR.

(I) (We) agree to the minimum Franchise Fee of three and

eight-tenths (3.8%) of annual gross receipts, and agree to pay any higher franchise fee offered in our proposal that may be accepted by the National Park Service.

PART B

Offerors must agree, in their proposal letter, to the minimum requirements identified in Part A of this proposal package, and must provide the information required by the following Part B subfactors to be considered responsive.

PRINCIPAL SELECTION FACTORS

PRINCIPAL SELECTION FACTOR 1. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROTECTING, CONSERVING, AND PRESERVING RESOURCES OF THE PARK AREA.

Subfactor B1(a) The National Park Service is committed to the conservation, protection and preservation of the natural and cultural resources of Grand Canyon National Park. In complying with all applicable laws relating to the protection, conservation and preservation of these resources, please address how you are going to comply with park specific policies and planning documents.

1. Many concession facilities are historic structures that are listed or eligible for listing on the National Register of Historic Places. All repair, rehabilitation and construction having an effect on cultural resources requires Section 106 consultation with the State Historic Preservation Officer.

   a. How will you ensure that the integrity of these facilities is maintained?

   b. What types of specialized training will be provided to staff responsible for maintaining these facilities?

   c. How will you ensure that no repair, rehabilitation or construction is initiated prior to appropriate consultation with the State Historic Preservation Officer?

2. Concession operations have potential to adversely impact the natural resources of the park.

   a. How will you ensure that ground-disturbing activities have been previously approved by the National Park Service?

   b. How will you ensure that your operations or employees' activities do not adversely impact park resources, i.e., parking cars outside parking areas; excessive grease getting into sewer system; hazardous materials spills, etc.?

Subfactor B1(b) Please identify your environmental program manager, and provide a brief description of his/her qualifications and past experience with regard to managing an environmental program. If the environmental program manager has not yet been selected, please identify the training and experience factors you will take into consideration in selecting the individual to fill this position.

Subfactor B1(c) The reduction of pollution and the use of toxic products in the park, within the constraints of U.S. Public Health Service codes, is an objective of the National Park Service. One method for doing so, that has been adopted by the National Park Service at Grand Canyon, is the use of environmentally preferable cleaning products for custodial, housekeeping and fleet operations. Primary products utilized for these purposes are naturally derived from renewable resources. Products that are toxic, skin irritants, flammable, corrosive, non-biodegradable, or that contain high VOC levels, petroleum and hydrocarbons, ozone-depleting, chlorinated compounds or artificial dyes and fragrances should be avoided.

Please describe, in narrative form, your commitment to this important objective and your specific plans for reducing or eliminating the use of toxic products.

1. Identify which of the departments you will convert to use of environmentally-preferable cleaning products and a timetable for each conversion.
2. How do you intend to identify products that meet the above criteria? What documentation will you require of the supplier?
3. Who on your staff will be responsible for monitoring this program? What are their qualifications to do so?

Subfactor B1(d) Submit with your offer a draft Environmental Management Program(EMP) for this operation, addressing the elements identified in the draft CONTRACT Section 6, Environmental and Cultural Protection. The Draft EMP will document processes and procedures to be established that ensure compliance with Applicable Laws related to protection, conservation and preservation of the environment.

Natural and cultural resources and associated values of Grand Canyon National Park are protected, restored and maintained in good condition and managed within their broader ecosystem and cultural context. Specific objectives in the concessioner's EMP should include:

- Hazardous Materials and Waste Management
- Solid Waste Management (including recycling and composting where appropriate)
- Water and energy conservation
- Fuel storage and delivery systems must meet all applicable requirements including underground and aboveground storage
- Emergency Planning and Response
- Pollution Prevention and Waste Reduction

- Reduction of emissions from vehicle and other operations that affect Air Quality
- Protection of water quality
- Protection of night skies from light pollution
- Reduction of noise and protection of natural sounds
- Pest management practices
- Sustainable design and construction practices
- Use of native species

PRINCIPAL SELECTION FACTOR 2. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROVIDING NECESSARY AND APPROPRIATE VISITOR SERVICES AT REASONABLE RATES.

Subfactor B2(a) Provide your specific plans for each of the services required by the Contract. Remember that the more complete and well-thought-out your plans, the better support you give to your required agreement to the statements in Part A.

Subfactor B2(b) Please provide the following information regarding your intention in implementing the Concessions Facilities Improvement Program required in the draft concession contract.

The estimates given in the Contract for costs involved in this program are Class "C" estimates. Class C estimates are conceptual cost estimates based on square foot costs of similar construction, or on identifiable known unit costs of similar construction items. Class C estimates are usually prepared before a fully defined scope of work is developed, and they consider such factors as job location, unusual site conditions, sources of materials and supplies, and the availability and skills of local labor pools.

1. Describe your proposed construction schedule for each of the projects required by the Concession Facilities Improvements Program.

   a. How do you propose to approach the planning, design and construction process?

   b. What is your projected construction cost for each of these projects?

Subfactor B2(c) The Offeror must accept the proposed maintenance plan without condition. The draft contract requires the new concessioner to maintain the facilities and assigned lands to the satisfaction of the Director and in accordance with the maintenance plan attached to the draft contract.

If you could make changes to the Maintenance Plan that would improve services to the visitors with respect to maintenance, please describe any additions or changes that you would propose to make. You can agree to accept the proposed Maintenance Plan without condition, as required in Part A, and still answer this question.

Subfactor B2(d) The Offeror must accept the proposed operating plan without condition. The draft contract requires the new concessioner to operate the facilities and services to the satisfaction of the Director and in accordance with the operating plan attached to the draft contract.

If you could make changes to the Operating Plan that would improve services to the visitors with respect to operations, please describe any additions or changes that you would propose to make. You can agree to accept the proposed Operating Plan without condition, as required in Part A, and still answer this question.

Subfactor B2(e) Submit a draft Risk Management Plan to address the elements of an effective health and safety program (Risk Management Program), according to the requirements of the draft contract for such a program. This plan must address the following:

- Management's Policy Statement, Duties, Employees' Responsibilities, and Administration
- Program administration (responsibilities, goals, resources, etc.)
- Inspection and Abatement
- Deficiency Classification and Hazard Abatement Schedules
- Accident Investigation and Reporting
- Public Safety Awareness and Promotion
- Safety/Health Committee
- Training
- Emergency Procedures

Subfactor B2(f) Employee Training. Concession employees are often a primary source of visitor information about park resources.

1. How will you train your employees about the purpose and significance of Grand Canyon National Park, its surrounding area and the National Park Service?

2. How will you train your employees to provide information to visitors? Recognizing that certain employees will have more contact and more responsibility in this area, what will be the minimum level of training you provide to all employees? What types of training will you provide to employees with more public contact, such as wait staff, retail clerks and service station attendants? What training will you provide to employees with direct interpretive responsibilities, such as tour guides and wranglers?

3. What kind of interpretive cross training with the National Park Service would be useful to your staff?

4. If the National Park Service initiates cross training on interpretive topics, will you participate?

Subfactor B2(g) The National Park Service wishes to continually upgrade gift and souvenir operations to focus more on the park's related themes. Merchandise should enhance appreciation and understanding of the park and the National Park System, the significance of the natural world and environment, and set a model of environmental responsibility. The draft Contract requires that the concessioner develop and implement a plan satisfactory to the Director that will assure that gift merchandise to be sold or provided reflects the purpose and significance of the park, including conservation of resources, geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

a. Consider how your merchandising program will fulfill the goals of the Gift Shop Mission Statement, Supplement B-3 to the Draft Operating Plan. How will you approach developing store themes and decors, as well as the necessary policies and sources of merchandise to successfully effect this program? Include specifically how you will acquire and present merchandise that represents the cultural diversity of the tribes associated with this area.

b. Provide ideas or sample products or descriptions of interpretive methods, media and/or material you propose to provide.

c. Propose any changes which you believe would improve the Gift Shop Mission Statement, Supplement B-3 to the Draft Operating Plan. You can agree to accept the proposed Operating Plan without condition, as required in Part A, and still answer this question.

Subfactor B2(h) It is the goal of the NPS to provide every visitor with multiple opportunities to learn about features of Grand Canyon National Park and their significance. Submit your plan for interpretive programs, and for training your employees in providing these programs.

How do you plan to integrate interpretive messages or activities into every suitable aspect of your operation? In your response, include how you intend to deliver interpretive information about the relationship between concessioners and the NPS, Grand Canyon cultural and natural resources, park resource protection, and safety issues. Provide ideas or sample products or descriptions of interpretive methods, media, and/or material you propose to provide.

PRINCIPAL SELECTION FACTOR 3. THE EXPERIENCE AND RELATED BACKGROUND OF THE OFFEROR, INCLUDING THE PAST PERFORMANCE AND EXPERTISE OF THE OFFEROR IN PROVIDING THE SAME OR SIMILAR VISITOR SERVICES AS THOSE TO BE PROVIDED UNDER THE CONCESSION CONTRACT.

Subfactor B3(a). Describe the entity with which the National Park Service will contract. Clearly define the Offeror's relationship to any superior and/or subordinate entities.

Using the format and instructions on the next two pages identify the Offeror and each business organization, operator and any parties involved in management of the proposed concession operation. Add information necessary to make the relationships clear.

The following three elements give an overview of the information requested in this section.

1. Identify the "Offeror" formally. Has this business organization been in existence for some time, is it new, or do you propose to establish it?

2. Explain the financial circumstances, legal form, formal structure and ownership of the primary business organization that would provide the services advertised if your proposal is chosen. Identify any related, subordinate or superior business organizations and any other organizations, contractors, or subcontractors that will have a substantial role in managing,

directing, operating, or otherwise carrying out the services to be provided. If the business organization is to be created, what guarantees will be provided by the entity submitting the proposal?

3. Identify any layers of related, subordinate or superior entities, significant contractors/subcontractors, or other organizations or individuals that will act in concert to provide the services required. Describe each of them and their relationships.

Support for Subfactor B3(a):

Provide an organizational chart showing the principal lines of authority within your primary business organization. Specify any related, subordinate, or superior business organizations or any other organizations, contractors, or subcontractors identified within subfactor 3(a) above.

* * *

APPENDIX 1. THE NATIONAL PARK SERVICE AND ITS MISSION

America's National Park Service was created by Congress to "... conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, the Congress has declared that the National Park System should be, "... preserved and managed for the benefit and inspiration of all the people of the United States." The National Park Service has as its overall mission the preservation and public enjoyment of significant aspects of the nation's natural and cultural heritage.

The National Park Service is an agency (bureau) of the Department of the Interior. The Department of the Interior, through its various bureaus, has responsibility for much of our nationally owned public lands and natural and cultural resources. This includes fostering wise use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The department also encourages stewardship and citizen responsibility for the public lands and promotes citizen participation in their care.

The National Park Service is managed by its Director who makes its policies under the direction of the Secretary of the Interior and through the Assistant Secretary, Fish and Wildlife and Parks. The Director seeks advice on policy and other concession-related matters from his Office of Concession Management. This office includes branches for financial, contracting, and planning and program matters.

CONCESSION PROGRAM MANAGEMENT

Concession Contract Management

As one of the means by which the public can be provided the facilities and services they need to enjoy national park areas, Congress has established a concession program in the National Park Service through the National Park Service Concessions Management Improvement Act of 1998. Title 36 of the Code of Federal Regulations contains important regulations for the preservation of the parks and administration of concession operations (36 CFR 51). Concession activities are also subject to Management Policies of the National Park Service.

The Secretary of the Interior, and those to whom he has delegated authority, are authorized to enter into concession contracts and permits. The National Park Service may provide "necessary and appropriate" facilities and services that are desirable for the visiting public through concession contracts.

These services include a wide variety of commercial visitor services from backcountry guiding to first class hotel operations. All are provided by private corporations, partnerships, individuals, or other entities under contract with the National Park Service. All exist for the purpose of providing park visitors with the services and accommodations that are necessary and appropriate for their full enjoyment of America's National Park Service-administered areas. The determination of what facilities and services are necessary and appropriate is made through the National Park Service's planning process. Needs vary with the purposes of the various park areas and their individual circumstances at the time of contracting.

The preceding description covers only the primary laws directly affecting the management of a National Park Service concession. Many other federal statutes apply. State and local laws and regulations may also apply depending on the nature

of park jurisdiction. Some areas are exclusively federal in jurisdiction while others involve state and local jurisdiction.

The services to be provided under this contract are to be performed under the applicable laws, regulations, policies, and planning existing now or established during the term of the contract.

Concession contracts are issued under regulations unique to the National Park Service Concession Management Program. They are not subject to the Federal Acquisition Regulations (FAR).

Concession Program Management

The NPS Concession Program represents the interests of the National Park Service through three subdivisions: park, regional and Washington offices including the Concessions Program Center in Denver.

At each park there is, at the least, an individual assigned the task of being the concessioner's immediate contact. This may be a part-time duty in a park where concession activities are minor in nature. For parks with larger operations, a full-time staff will manage the park's immediate relationship with its concessioners and support the park superintendent.

For management purposes, the National Park Service is divided into seven regions, each with an office of the Regional Director. Each Regional Director's office has a System Support Office providing various technical functions including an Office of Concession Program Management. This concession management group provides advice to the region's parks and to the Regional Director and provides a variety of support to parks for contracting and other work.

In Washington, D.C., a staff of specialists makes policy recommendations to the Director and manages problem issues. This office is under the leadership of the Concession Program Manager, National Park Service. This office is part of

the Park Operation and Education subdivision of the Washington office.

The Concession Program Center (CPC), located in Denver, CO, provides nationwide assistance in a variety of subjects relating to the concession management program. The CPC does feasibility studies, calculates insurance replacement cost values, carries out concession planning as separate assignments or as part of overall park planning teams, and undertakes a variety of special projects required to serve park goals.

Program Management - Operating Programs and Practices

Concessioners in the national parks join with the National Park Service in carrying out a part of the Service's mission. While the role of a concessioner must include well defined business-oriented goals and management, in order for the relationship to be successful the concessioner must also adopt the goals of the park as its own and make the achievement of park objectives for visitor service and other matters part of the concessioner's objectives.

Concessioners and their staffs are important members of the park community. Park visitors often have more contact with and receive more information from concession employees than park staff. These contacts can have a significant effect on the quality of the visitor's experience. Concessioners often occupy important historic structures and have, through their operations, meaningful effects on park resources.

To manage all these effects, Concession Program Management in the National Park Service has developed operating programs and practices. These allow the Service to supervise concessioner activities in an orderly way and establish certain unique approaches to conducting hospitality and recreation services in the National Park System.

Resource Protection Considerations. The National Park Service expects its concessioners to join with the Service in fulfillment of its mission, and to give special attention in their operations to the preservation, conservation, and protection of park resources and the environment.

Routine business operations, educational activities and employee programs must be conducted in accordance with all applicable environmental laws, and in a manner and by such methods that minimize negative environmental impacts on the parks and that encourage others to do the same. In this way, a concessioner can participate with the Service in its environmental leadership role.

Appropriate participation in such activities is an evolving agenda. Issues and technologies change over time. The following provide some idea of the Service's current agenda.

1. Solid waste disposal is a major environmental issue as well as a costly problem. The concessioner will be expected to reduce, reuse, and recycle. The new concessioner should actively work to reduce the amount of trash and waste generated, to acquire products with consideration given to the ability to reuse or recycle the product and its packaging, and to recycle all materials possible. An approach that minimizes such trash and ensures recycling where possible is necessary.
2. Water and energy conservation must be practiced in daily operations and incorporated into the design and construction of both rehabilitated and new facilities.
3. Concessioner-operated underground and above ground tanks for building and vehicle fuels, whether Government or Concessioner owned, must meet all of the requirements of Federal, state, and local law and regulation. Responsibilities include cleanup of spillage or leaks, demonstration of financial responsibility, and fulfillment of reporting requirements.

4. The effect of vehicles and other operations on air quality is of concern to the National Park Service. Fuel and engine technology is evolving in ways that will benefit air quality. Concession operations should adapt their operations to such changes as they are proven to be reliable and effective.
5. Operations may be conducted in a natural area with a variety of wildlife. The new concessioner must conduct its operations under Service direction for mitigating human-wildlife interactions.
6. Employee orientation programs and development must genuinely emphasize the importance of the park's natural and cultural resources and the necessary consideration for them due from all employees.
7. The Integrated Pest Management Program ensures that use of chemicals to control plant and insect pests is strictly regulated to minimize such uses and that such applications are the last resort in control efforts. The concessioner must work with the park in implementation of this program in its operations and in the areas for which it is responsible.

The overall objective of Resource Protection is to conduct operations in a steadily evolving way oriented towards the use of efficient and cost-effective approaches that minimize negative impacts on our environment and to encourage others to do so too, for the same cost-effective and self-protective reasons.

Construction. Construction of all kinds should harmoniously integrate with the environment where it is located. Facilities that are cultural resources should be managed so as to maintain their intrinsic qualities through sustained conservation. Architectural style, design elements and construction materials should reflect the park and its history.

Plans and specifications for any and all construction and landscaping development on government-owned lands assigned to the new concessioner must be approved in writing by the National Park Service before the work may be started. Plans must be prepared in accordance with National Park Service Drafting Guideline (NPS-10), which will be made available upon request. The National Park Service microfilms all plans for retention.

Construction codes to be followed are nationally applicable codes such as the Uniform Building Code and the National Fire Protection Association codes, including the National Fire Code, in the latest editions. Regional and local codes are followed where they set a higher standard than national codes or address unique issues. Even where park jurisdiction requires local codes to apply, higher standards in national codes will be used for concessioner construction.

The seismic safety standards to be applied to new buildings designed and constructed within the National Park Service System are:

1. 1991 International Conference of Building Officials Uniform Building Code.
2. 1992 Supplement to the Buildings Officials Conference of America National Building Code.
3. 1992 Amendments to the Southern Building Code Congress Standard Building Code.
4. State, county, and local jurisdictions having specific seismic safety standards.

Interpretation. The National Park Service expects that its concessioners will, in appropriate ways, interpret park natural and cultural resources, to park visitors and concession employees, with the objective of instilling in them an appreciation of the park area. Concessioner interpretive messages should include safety, local resource management issues and objectives, history of the area, and interpretive themes identified in the park's Interpretive Prospectus. These opportunities

and responsibilities are more specifically identified in the contract and operating plan for this operation.

Rates For Services. Rates and prices charged are subject to prior approval of the National Park Service. Reasonableness and appropriateness of rates and charges will be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due allowances for length of season, provision for peak loads, accessibility and cost of labor and material, and type of patronage with consideration given to other factors deemed relevant (See PL 105-391). The National Park Service concession rate approval program identifies several methods by which comparable rates may be established. It is the responsibility of the regional director to approve the method used and the responsibility of the superintendent to approve rates.

To reduce government expenses, the concessioner will be required to provide reduced rates for lodging and transportation to government employees on official business. Reduced rates under this program may only be provided for lodging and transportation. All other rates for all other goods and services are to be charged to all government employees and their dependents in the same manner as to general park visitors.

Equal Opportunity. The Service is interested in having its concession operations reflect, through its employees, the cultural and ethnic diversity of the area in which they operate and of the nation as a whole. The Service is also interested in having participation in the management of the new concession by minority and women professionals. The Service believes that a varied and diverse concession workforce will better serve the increasingly varied and diverse clientele that uses the Nation's national park areas. A participation program for minority and women employees that advances these

goals is very desirable. Provisions of the contract address this goal.

Facility and Service Accessibility. The concessioner will be required to comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. Compliance with ADAAG meets all accessibility requirements under the Americans With Disabilities Act and Section 504 of the Rehabilitation Act.

An offeror must demonstrate a commitment to full participation for persons with disabilities. This commitment must represent opportunities for both mainstreaming individuals into the normal use patterns of concession facilities as well as the willingness to provide specialized accommodation and programs.

The Service recognizes that there are significant variations among concession activities as to the possible range of accessibility and accommodation. However, each concessioner will be expected to handle accessibility issues and inquiries in a supportive and assisting manner that provides maximum opportunities for persons of all abilities.

Utilities. Where utility services are readily available, concessioners will be required to obtain them from local sources. In other circumstances, the National Park Service may furnish utilities to concessioners. Rates for services furnished by the National Park Service shall be based on actual operating costs (excluding capital investments) or comparability to areas used in establishing visitor rates, whichever is greater. In the event actual costs exceed comparability, the amount of difference may be passed on to the visitor through the rate approval process. Requests to pass on such additional actual costs must be approved in advance by the superintendent.

Maintenance Plan. The maintenance plan provides park-specific information about required maintenance. The parks will describe the interaction of park maintenance activities

with concessioner activities and will specify and describe any maintenance tasks unique to the particular park that must be performed by concessioners and those, if any, that will be the responsibility of the National Park Service.

The concessioner generally will be required to maintain, repair, and perform improvements on all assigned concession facilities, including cyclic maintenance, grounds maintenance, landscaping, and all necessary "housekeeping" activities associated with the concession operation, to the satisfaction of the National Park Service. The National Park Service in consultation with the concessioner, will determine the specific maintenance responsibilities, and establish priorities and projected completion dates.

The maintenance plan is initiated at the park level and signed by the park superintendent. Typically, superintendents will ask concessioners to consult on the content of such plans. Such plans may not alter provisions in the body of the contract document or Service policy.

The initial maintenance plan is an exhibit to the contract. A plan must be signed by the successful offeror at the time that the contract is signed. It will be reviewed on no less than an annual basis, and changes will be made as determined appropriate by the National Park Service.

Operating Plan. The operating plan includes such details about the operations as are necessary for the concessioner and the National Park Service to operate smoothly together, and provides the concessioner with information as to what specific operating practices are considered satisfactory in the circumstances of a particular park.

Operating plans include such things as hours of operation, scope and quality of service, management information, lost and found procedures, reservations, advance deposits, cancellations and refund policy, convention policy, rates, safety, sanitation, security, and health care, concession employees

and employment, complaint review process, prior notification of changes in key management staff, and other areas of concern.

The operating plan is initiated at the park level and signed by the park superintendent. Typically, superintendents will ask concessioners to consult on the content of such plans. Such plans may not alter provisions in the body of the contract document or Service policy.

The initial operating plan is an exhibit to the contract. A plan must be signed by the successful offeror at the time that the contract is signed. It will be reviewed on no less than an annual basis, and changes will be made as determined appropriate by the National Park Service.

Environmental Management Program. The Environmental Management Program provides parkspecific information about the concessioner's role in providing its services in an environmentally sensitive manner. Environmental management programs include such topics as hazardous waste management, (etc.)

The successful offeror must submit the initial environmental management program for approval by the National Park Service within 60 days after the effective date of the contract. The approved program must be adhered to by the concessioner. It will be reviewed on no less than an annual basis, and changes will be made as determined appropriate by the National Park Service.

Sale of Souvenirs and Handicrafts. The selection and sale of gifts, souvenirs, and handicrafts in areas administered by the National Park Service is restricted in certain ways by National Park Service policies. The selection of items is limited to those that are appropriate for the public use and appreciation of the park. The sale of appropriate handicrafts associated with or interpretive of an area is especially encouraged. The concessioner will work with the park and its interpretive

staff to determine what sorts of merchandise are most appropriate for the park area.

Insurance. The proposed contract requires the concessioner to insure any buildings, structures, equipment, furnishings and betterments, and merchandise used in the operation. Full replacement value coverage is required for facilities needed by the park to serve the visitor.

In addition, the concessioner must carry liability insurance adequate for the types of activities it conducts.

The contract requires the new concessioner to purchase and maintain various types of insurance. Minimum coverage limits, as required, are provided in the appendix.

Historic Preservation and the National Register of Historic Places. Some facilities used by concessioners are on or may be eligible for the National Register of Historic Places. They are required to be maintained in accordance with the Secretary's Standards for Historic Preservation. This can be more time consuming and expensive than operations in non-historic buildings.

If such facilities will be used by the concessioner under this contract, requirements will be more fully described in the applicable contract. The preferred approach is to use a Historic Structures Report as a source for significance, and a Historic Structure Preservation Guide to become aware of maintenance techniques and standards. If such documents do not exist for these facilities, more detailed project consultation will be required prior to working on the affected buildings. Carrying out such maintenance requires specially trained maintenance staff.

Compliance with Federal State and Local Laws. Concessioners operate on Federal land but within the jurisdictional framework established by the application of park jurisdiction. Federal statutes apply to concession operations. State and local laws and regulations may also apply.

Concessioner Risk Management Program. The concessioner will develop, maintain, and implement a documented risk management program. This written program describes procedures, policies, and documentation for a process to minimize incidents and accidents that will affect the visitor, concession employees and the facilities. The program shall include the following elements appropriate to the size and scope of the required services:

a. Management's Policy Statement, Duties, Employee's Responsibilities, and Administration.
b. Inspection and Abatement
c. Accident Investigation and Reporting
d. Safety/Health Committee
e. Training
f. Emergency Procedures

Program Management - Financial Programs and Practices

The intention of the National Park Service is to contract with private businesses and individuals to conduct concession activities that are necessary to achieve park goals rather than to have the government conduct those activities directly. The National Park Service generally requires the payment of a franchise fee based on the probable value of the opportunity provided by the government.

Concessioner Pays Operating Costs. The costs of operation should be covered by the concessioner as agreed to in the concession contract. Concessioners should not expect that the National Park Service will reduce fees or otherwise underwrite costs and unexpected events.

Real Property in a Park Belongs to the National Park Service. If real property improvements are made, the title to them will belong to the United States. However, under the terms of the applicable Contract, the United States may have an obligation to compensate a concessioner in the future for

those real property improvements. This obligation to compensate is referred to in the contract as "leasehold surrender interest."

Real Property Outside the Park Belongs to the Concessioner. Concessioners who invest in real property outside of federal lands for the purposes of supporting in-park operations are not obliged to sell that property to any incoming concessioner. The government will not compensate concessioners for such property or require any incoming operator to purchase such property.

Personal Property Belongs to the Concessioner. Concessioners, not the government, are the owners of most types of personal property. The government will not require any successor concessioner to purchase such personal property.

Businesses May Have a Limited Sale Value. Concession businesses may not be sold without the approval of the National Park Service. Policies and procedures are described in 36 CFR 51, Subpart J. Among other matters, these policies require that the National Park Service make certain findings before approving a sale or transfer.

Fair Return for the Operator. There is no guarantee of any profit or of a profit in any given year. It is the responsibility of the offeror to assure itself that the terms of its offer provide it a reasonable opportunity for profit.

Franchise Fee. A concession operation exists, first and foremost, to serve park visitors. Public Law 105-391, defines the franchise fee as follows:

> A concessions contract shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

Concessioner Review Program. The regional director, through the park superintendent and his/her designated representatives, will maintain a continuing review of concession operations and management. This continuing review will determine if the concessioner is complying with all provisions of the contract and will evaluate the concessioner's operation to determine if satisfactory performance as required by Public Law 105-391 is being provided. This concessioner review program will include, but not be limited to:

1. The quality of the service rendered to the public;
2. The prices that are charged the public;
3. The condition of the premises;
4. The appearance and conduct of employees;
5. The degree to which facilities are properly maintained and repaired as required by the particular concession authorization;
6. The nondiscrimination policies of the concessioner with relation to both employment and service to the public;
7. Compliance with the Concessioner Risk Management Program;
8. Compliance with U.S. Public Health Service standards and requirements and state and local health codes that may be applicable;
9. Compliance with practices that foster a safe environment for the public; and
10. Compliance with the various administrative and financial requirements of the contract, including any applicable construction program.

Periodic written evaluations will be prepared by the applicable park, usually two or three times a year, following the procedures and requirements of the National Park Service concessioner review program.

From these evaluations an annual rating is established. Failure to operate in a manner satisfactory under the requirements of the concessioner review program may be cause for termination of a concession authorization.

* * *

APPENDIX 4: 2001 NPS MANAGEMENT POLICIES

Chapter 10: Commercial Visitor Services

The National Park Service will provide, through the use of concession contracts, commercial visitor services within parks that are necessary and appropriate for visitor use and enjoyment. Concession operations will be consistent with the protection of park resources and values and demonstrate sound environmental management and stewardship.

Public accommodations, facilities, and services must be consistent to the highest practicable degree with the preservation and conservation of park resources and values.

10.1 General

Commercial visitor services will be authorized through concession contracts or commercial use authorizations, unless otherwise provided by law. Section 10.2 addresses concession authorizations. Section 10.3 addresses commercial use authorizations.

(Also see Director's *Orders #48A: Concessions Management, and #48B: Commercial Use Authorizations)*

10.2 Concessions

10.2.1 Concession Policies
Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998; National Park Service regulations published at 36 CFR Part 51; this chapter of NPS Management Policies; and Director's Order #89A: Concession Management, and other specific guidance that may be issued under the Director's authority.

10.2.2 Commercial Visitor Services Planning
Commercial visitor services planning will identify the appropriate role of commercial operations in helping parks to achieve desired visitor experiences, and will be integrated into other plans and planning processes.

Concession management plans or commercial services plans will support a park's purpose and significance, exceptional resource values, and visitor experience objectives, and will be consistent with enabling legislation. These plans will also determine whether proposed concession facilities and services are necessary and appropriate, and will consider alternatives. Proposed concession operations must be economically feasible and generally supported by a feasibility study prepared by a qualified individual. Any concession facilities improvement program, or any service authorized in a concession contract, will be in conformance with the appropriate approved plan(s) for the area being considered. A decision to authorize a park concession will be based on a determination that the facility or service:

- Is necessary and appropriate for the public use and enjoyment of the park in which it is located, and identified needs are not, nor can they be, met outside park boundaries;
- Will be provided in a manner that furthers the protection, conservation, and preservation of the environment and park resources and values;
- Incorporates sustainable principles and practices in planning, design, siting, construction, utility systems, selection and recycling of building materials, and waste management; and
- Will enhance visitor use and enjoyment of the park without causing unacceptable impacts to park resources or values.

The number, location, and sizes of sites assigned for necessary facilities will be the minimum necessary for proper and satisfactory operation of the facilities, emphasizing compatibility of design; preservation of esthetic values, and natural and cultural resources; and integration of sustainable design concepts. For information about leasing historic structures for concession purposes, see Director's Order #38: Real Property Leasing.

10.2.3 Concession Contracting

Approved standard contract language will be used in all National Park Service concession contracts.

10.2.3.1 Terms and Conditions of Contracts
Concession services will be authorized under concession contracts, unless otherwise authorized by law. The term of a concession contract will generally be 10 years or less. However, the Director may award a contract for a term of up to 20 years if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection, visitor needs, and other factors that the Director may deem appropriate.

10.2.3.2 Modifications
Concession contracts may be modified only by written amendment. Amendments developed after the issuance of a concession contract must be consistent with current National Park Service policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide additional visitor services only if the services are minor and comprise a reasonable extension of the existing services.

10.2.3.3 Extension
Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

10.2.3.4 Competition
In order to obtain the best service provider and maximize benefits to the government, the National Park Service encourages competition in the awarding of concession contracts. The National Park Service also encourages, through

outreach, the participation of American Indian, minority and women owned businesses when new business activities occur.

10.2.3.5 Third-party Agreements and Sub-concessions
Unless specified in the contract, sub- concession or other thirdparty agreements, including management agreements, for the provision of visitor services that are required and/ or authorized under concession contracts are not permitted. The NPS may also advertise for a new concession contract to provide these additional services.

10.2.3.6 Multi- park Contracts
Concessioners operating in more than one park unit must have separate contracts for each park unit. An exception may be made in the case of those park units having common National Park Service management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks).

10.2.3.7 Termination
The Service may terminate concession contracts for default and under any other circumstances specified in the concession contract.

* * *

APPENDIX F

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65 Fed. Reg. 20,630

RULES AND REGULATIONS

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AC72

Concession Contracts

Monday, April 17, 2000

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends 36 CFR Part 51, the National Park Service (NPS) regulations concerning NPS concession contracts, to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998 (the 1998 Act). The 1998 Act provides new legislative authorities, policies and procedures for the solicitation, award and administration of concession contracts by NPS. This rule was published as proposed for public comment in the Federal Register as a matter of policy on June 30, 1999. NPS provided a 60-day public comment period on the proposed rule. This was extended by 45 days upon public request. NPS has fully considered all public comments received and considers this final rule to be lawful, consistent with the policies of Congress as expressed in the 1998 Act, and as accommodating to the concerns of commenters as possible in light of the legal and administrative responsibilities of NPS under the 1998 Act and other applicable authorities.

EFFECTIVE DATE: May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 C Street, NW, Washington, DC 20240 (202/565-1219).

SUPPLEMENTARY INFORMATION: The 1998 Act has established a new statutory framework for the solicitation, award and administration of NPS concession contracts. Concession contracts are the form of governmental authorization used to permit persons (concessioners) to provide accommodations, facilities, and services to visitors to areas of the national park system. These services include, for example, lodging, food, merchandising, transportation, outfitting and guiding, and similar activities.

NPS has been awarding and administering concession contracts for this purpose in various forms since 1916 under the terms of 16 USC 1 *et seq*., the NPS "Organic Act." In 1965, Congress formally established by the Concession Policies Act of 1965, 16 USC 20 *et seq*. (the 1965 Act), a number of policies and procedures regarding concession contracts. NPS regulations contained in 36 CFR Part 51 implemented the 1965 law. On November 13, 1998, the Congress substantially revised these policies and procedures by passage of the 1998 Act. Many of the policies and procedures adopted by NPS in 36 CFR Part 51, as amended, and standard NPS concession contracts developed under the 1965 Act are reflected in the terms of the 1998 Act.

The Congress had two primary objectives in revising the 1965 Act: making the NPS concession management program more efficient and enhancing competition in NPS concession contracting.

The first objective is reflected in provisions of the 1998 Act that call, among other matters, for contracting to private businesses certain aspects of NPS concessions management and the establishment of an NPS Concessions Management Advisory Board to advise NPS on the conduct of its concessions management program. These provisions, although very

important, will be implemented administratively by NPS rather than through program regulations.

The second objective, enhancement of competition in NPS concession contracting, is reflected in the 1998 Act in a number of ways. Primarily, however, the 1998 Act achieves greater competition in two ways.

First, to achieve greater competition, the 1998 Act repealed, except for smaller and outfitter and guide concession contracts, the "preference in renewal" provision of the 1965 Act. The 1965 Act's preference in renewal provision required NPS to give existing satisfactory concessioners a preference in the renewal of their concession contracts, if the contract was to be continued after its expiration. This preference required NPS to permit existing satisfactory concessioners to meet the better terms and conditions of the best competing proposal for the renewal of its concession contract. Because of this preference, NPS estimated in 1993 that since 1965 over 99.9% of the renewals of NPS concession contracts had been awarded to the existing concessioner. In fact, from 1965 to 1993, only seven NPS concession contracts out of approximately 1900 awarded were not awarded to the incumbent concessioner (where the incumbent sought the contract). True competition simply did not exist.

The legislative history of the 1998 Act states as follows in connection with the repeal of the preference in renewal:

Under the 1965 Act, all satisfactory concessioners are entitled to preference in renewal of their concession contracts or permits. However, in light of the current circumstances of units of the National Park System and in recognition of present business conditions, the Committee considers that generally there is now no need to continue to provide a preferential right of renewal to concessioners in order to obtain qualified operators. Accordingly, to foster appropriate competition in the award of National Park Service concession contracts, the preferential right of renewal provided as a

statutory right to existing satisfactory concessioners is repealed by the S. 1693 [the bill that became the 1998 Act]. S. Rep. No. 105-202, at p.31 (1998).

The 1998 Act's other primary means to enhance competition in concession contracting was its reform of the 1965 Act's "possessory interest" concept. Under the 1965 Act, a concessioner that constructed real property improvements on park area lands under the terms of a concession contract obtained a compensable interest in the improvements in the form of a "possessory interest." The value of the possessory interest as of the date of the expiration or other termination of the concession contract was the "sound value" of the improvements to which the possessory interest related, but, not to exceed the "fair market value of the improvements," unless NPS and the concessioner agreed to an alternative value.

The Congress in considering S. 1693 noted that possessory interest under the 1965 Act was frequently criticized as "anti-competitive" because "the value of an existing concessioner's possessory interest was difficult to establish, thereby discouraging submittal of competitive offers for renewal of concession contracts." S. Rep. No. 105-202, at p. 35 (1998).

The 1998 Act reformed the possessory interest provisions of the 1965 Act through the leasehold surrender interest concept. Instead of obtaining a possessory interest in real property improvements as provided by the 1965 Act, the 1998 Act provides a "leasehold surrender interest" in "capital improvements" a concessioner constructs on park area lands "under the terms of a concession contract." The legislative history states as follows about the purposes of leasehold surrender interest:

The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investment in visitor facilities in the National Park System. However,

the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary [of the Interior] can accurately calculate the amount for purposes of competitive solicitation of concession contracts. *Id.*

This final rule has three major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by NPS under the 1998 Act. With certain exceptions, the 1998 Act requires competitive award of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a better competing proposal for a new concession contract. In fact, although the preference in renewal was the most mentioned issue in the comments received, more than 75% of the some 630 current NPS concessioners will continue to benefit from a preference in the renewal of their concession contracts. This is because the 1998 Act extends a preference in renewal to concessioners with contracts that have gross receipts of less than $500,000 or are outfitter and guide concessioners (more than 75% of the total).

Second, unlike the existing 36 CFR Part 51, the final rule sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This leasehold surrender interest is defined in general terms in the 1998 Act. This rule establishes appropriate specific terms and conditions for leasehold surrender interests under the authority of the 1998 Act. Clarity as to the scope of leasehold surrender interest is important to both NPS and concessioners. Accord-

ingly, the leasehold surrender interest subpart of this rule is lengthy. However, concession contracts will be proportionately shorter as for the most part they will refer to this rule with respect to leasehold surrender interest terms and conditions.

Finally, the rule describes a number of provisions that concession contracts will contain in implementation of the 1998 Act.

The final rule reflects NPS's interpretation of the various provisions of the 1998 Act to appropriately administer the Act's requirements and purposes that are suitable for regulatory implementation. Section 417 of the 1998 Act requires NPS to promulgate regulations "appropriate for its implementation."

A. Response to Public Comments

* * *

"Concession Contract (or Contract)"

The general concessioner organization requested clarification of this definition with respect to when a concession contract can be something other than a written agreement. NPS has deleted the phrase "unless otherwise indicated in this part" in response to this comment.

The general concessioner organization also asked NPS to clarify its position regarding circumstances where an existing concessioner may continue to operate after the expiration of a concession contract. Particularly, the comment requested NPS to make clear that (i) an incumbent concessioner is not required to continue to operate after the expiration of its contract; (ii) that if the concessioner does not choose to continue to operate, NPS must honor the obligations of the expired contract; (iii) that if the concessioner does continue to operate the continuation is to be on the same terms and conditions as the expired contract unless otherwise agreed by the parties; and (iv) the concessioner, if it continues to operate, "shall not be placed in any worse economic position upon the commencement of the new contract than the concessioner would have been had the new contract commenced upon the original expiration date of the prior contract."

NPS considers that the first three statements must be examined in the context of particular contracts and need no amplification in the regulations. The last point seems to suggest that a concessioner that continues to operate after the expiration or other termination of a concession contract may be harmed economically by this action. However, as a concessioner is not obliged to continue operations upon the expiration or other termination of a concession contract (unless the terms of a concession contract otherwise provide), a concessioner's decision to continue operations would seem to obviate any concerns about possible "economic harm" resulting from the continued operations. In any event, NPS does not consider that changes to the definition of "concession contract (or contract)" are warranted on the basis of these comments. (NPS points out that it uses the phrase "expiration or other termination" of a concession contract in this paragraph as the 1965 Act utilizes this terminology. Under the 1965 Act, the "expiration" of a concession contract is considered a form of contract termination.)

Several comments also objected to the statement in this definition that concession contracts are not contracts within the meaning of 41 USC 601 *et seq*. (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations, or policies that apply only to federal service contracts or other types of federal procurement actions.

NPS has fully considered these views and disagrees with their conclusions. The Contract Disputes Act, by its terms, applies to procurement contracts. A procurement contract is a contract under which the government bargains for, pays for,

and receives goods or services. *YRT Services Corporation* v. *United States*, 28 Fed. Cl. 366, 392, n.23 (1993).

The court in *YRT Services* concluded that an NPS concession contract for lodging facilities "did not constitute a procurement" as NPS is not paying for the [concessioner's] services but is "collecting fees in exchange for granting a permit to operate a concession business." *Id.*

Several comments on this issue discussed a series of Interior Department Board of Contract Appeals (IBCA) decisions that held that NPS concession contracts are subject to the Contract Disputes Act as procurement contracts. However, several General Accounting Office decisions take a contrary view. NPS has reviewed the IBCA decisions and notes that all but one preceded the decision of the Court of Claims in *YRT Services*, and all concern 1965 Act concession contracts, not 1998 Act concession contracts. (This final rule, issued under the terms of the 1998 Act, supercedes these IBCA decisions.)

NPS points out that the 1998 Act, unlike the 1965 Act, contains an express statement as to the purposes of NPS concession contracts:

In furtherance of the findings and policy stated in Section 402, and except as provided by this title or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize a person, corporation or other entity to provide accommodations, facilities and services to visitors to units of the national park system. (Section 403 of the 1998 Act. Emphasis added.)

This statutory provision tracks the reasoning in *YRT Services* as to why 1965 Act concession contracts are not procurement contracts. The purpose of concession contracts is not to procure goods or services for the government. Furthermore, NPS notes that the existing 36 CFR Part 51, the NPS regulations that implemented the 1965 Act, expressly state that concession contracts "are not Federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to Federal procurement actions." (36 CFR 51.1.) The Congress, in passing the 1998 Act, must be presumed to have been aware of this regulatory interpretation and the decision of the court in *YRT Services*. In fact, it appears that the inclusion of the sentence in Section 403 of the 1998 Act to the effect that concession contracts are contracts that "authorize a person to provide accommodations, facilities and services" to park area visitors is a direct confirmation of the position of the court in *YRT Services* and the NPS interpretation of the 1965 Act contained in the existing 36 CFR Part 51.1. NPS concession contracts do not procure services for the government; rather, they authorize third parties to provide services to park area visitors.

The NPS Organic Act, 16 USC 1 *et seq.*, also expressly recognizes this distinction. 16 USC 17b provides that the Secretary of the Interior is authorized to contract with persons that provide services or other accommodations to the public in national parks to furnish such services or accommodations to the Government without compliance with the 41 USC 5. 41 USC 5 is the title of the United States Code that establishes procurement contract requirements. Accordingly 16 USC 17b makes clear that if the government contracts with a concessioner to provide services and accommodations to the Government (that the concessioner is authorized to provide to the public), the contract is a procurement of services to the government otherwise subject to 41 USC 5. In addition, by implication, this authority also makes clear that a concessioner's authorization to provide goods and services to park visitors is not a procurement contract as the goods and services are not provided to the Government.

NPS, in reviewing this issue, did consider the fact that concession contracts in one sense could be argued to result in "services" to the government, i.e., that concession contracts may require the concessioner to repair and maintain govern-

ment property assigned to a concessioner under the terms of a concession contract. However, these services (repair and maintenance of government property) flow from the assignment (the equivalent of a lease of government property) of property to a concessioner for use in concession operations.

In this connection, the 1998 Act expressly exempts NPS concession contracts from the application of Section 321 of the Act of June 30, 1932 (40 USC 303b), "relating to the leasing of buildings and properties of the United States," thereby permitting NPS to accept the repair, maintenance and improvement of government property from a concessioner instead of collecting cash rent for the use of the property. The legislative history of the 1965 Act (and a related 1962 law) indicates that this provision was included in the 1965 Act (and a related 1962 law) in response to a Comptroller General Opinion that concession contracts are leases. Accordingly, to the extent that the repair and maintenance of assigned property may be considered as "services" to the government, these services are recognized by the 1998 Act as an authorized function of the assignment of government property under concession contracts, not as a procurement of services for the government.

For these reasons, NPS does not consider that NPS concession contracts are subject to the Contract Disputes Act or to other statutes that apply only to federal procurement contracts. Accordingly, it has left this statement in the final rule. NPS also points out that it does not consider the solicitation of NPS concession contracts to be subject to the Competition in Contracting Act ("CICA") as it applies to procurement contracts. *YRT Services* at p. 392. In any event, even if it were determined that NPS concession contracts are subject to CICA, the express provisions of the 1998 Act describing mandatory NPS concession contracting procedures make CICA inapplicable to NPS concession contract under its own terms. 41 USC 253(a)(1)(1988).

A comment asked whether the term "concession contract" refers to "concession permits" awarded under the 1965 Act. It does, as indicated in the definition of "concession contract."

A sentence has been added to this definition in the final rule to clarify that concession contracts must include terms and conditions as are required by law, this part, or are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

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APPENDIX G

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65 Fed. Reg. 44,894

NOTICES

DEPARTMENT OF THE INTERIOR

National Park Service

Simplified Concession Contracts; Revision

Wednesday, July 19, 2000

ACTION: Final revision of the National Park Service simplified concession contracts.

SUMMARY: The National Park Service (NPS) authorizes certain business entities to operate concessions in areas of the national park system. The agreements embodying these authorizations are concession contracts (and, previously, concession permits) that incorporate NPS terms and conditions established by law and prudent contract administration. In 1998, Public Law 105-391 (the 1998 Act) was enacted and which in many significant ways affects the content of concession contracts to be entered into after its effective date. NPS has amended its existing standard concession contract (Category I contract) to conform to the requirements of the 1998 Act and to otherwise make improvements to the standard form (65 FR 26052, May 4, 2000).

Under this notice, NPS adopts two simplified versions of its standard concession contract (Category II and Category III contracts) that will be used for smaller concession operations. Although not required to do so by law, NPS sought by publication in the Federal Register on December 21, 1999, public comments on the proposed simplified contracts to assist it in developing final versions as a matter of public comment. NPS, after consideration of public comments has adopted these simplified versions of its standard concession contract.

NPS points out that these simplified versions of the standard concession contract serve as a guideline for the form of concession contracts used to authorize smaller concession operations. These forms reflect the current policies of NPS with regard to concession operations, but may be changed by the Director of NPS when necessary to accommodate the circumstances of any particular contracting situation, so long as the contract form used is consistent with the 1998 Act and 36 CFR Part 51.

EFFECTIVE DATE: August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, Concessions Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 10140 (202/565- 1210).

SUPPLEMENTARY INFORMATION: The 1998 Act, among other matters, amended the statutory policies and procedures under which NPS operated its concession program. The new law required adoption of new regulations governing the award, content and management of concession contracts. On June 30, 1999, NPS published for public comment proposed regulations implementing the new law. The final new regulations were published in the Federal Register on April 17, 2000. On September 3, 1999, NPS published for public comment a new standard concession contract (Category I contract). The final Category I contract language was published in the Federal Register on May 4, 2000. On December 21, NPS published for public comment its proposed simplified concession contracts (Category II and Category III contracts) that will be used for smaller concession operations that do not involve the concessioner's obtaining a compensable interest in real property located on park lands. The simplified concession contracts set forth in this notice reflect the requirements of the 1998 Act and the requirements of the amended 36 CFR Part 51. They also reflect a variety of improvements NPS wishes to make to its standard form con-

tracts, including a new organizational structure for the sake of clarity.

NPS will utilize the three contract categories as follows:

Category I contracts will be used in situations where the concessioner will be required or allowed to construct or install capital improvements on park area lands, thereby acquiring in certain conditions a leasehold surrender interest. Category I contracts will also require that the concessioner perform capital maintenance on assigned concession facilities, as necessary, and may require the establishment of a maintenance reserve for this purpose.

Category II contracts will be used in situations where a concessioner will operate on assigned land or in an assigned concession facility, but will not be allowed to construct or install capital improvements. As an example, a Category II contract might be used to authorize a gift shop operation in a portion of a park visitor center, or a small snack bar operation in an assigned building.

Category III contracts will be used in situations where no lands or buildings are assigned to the concessioner; consequently, the concessioner will not be allowed to construct or install any capital improvements and the concessioner will not obtain any leasehold surrender interest. Many outfitter/guide operations will be authorized by Category III contracts.

Public Comments

Twenty-two public comments were received in response to the public notice. Twenty of these comments were from outfitters and guides, or groups representing outfitters and guides. The remaining two comments were submitted by an organization representing some 150 existing concessioner members (the "general concessioner organization"), and by one large concessioner supporting the comments made by that organization.

Two commenters expressly incorporated by reference objections they had made to the proposed Category I contract. Those comments are not addressed here, as they have been addressed in the preamble to the Category I contract. Additionally, several comments directed to specific provisions of the Category II and Category III contracts have been addressed in response to similar comments received on the Category I contract. These comments will be noted here, and the response will give reference to the section of the Category I preamble where they have been addressed. Changes made to the Category I contract in response to public comments are incorporated in the final simplified contracts where applicable.

General Comments

All but one commenter stated that the simplified contracts must specifically recognize the right of preference provided to outfitters and guides and small businesses under the 1998 Act. See NPS response in paragraph 7, Additional Provisions Section of the Category I contract.

One commenter who submitted comments on behalf of Alaska hunting guides identified several sections where conflicts may exist between the contracts and the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) or other laws specific to Alaska. NPS wishes to point out that the proposed simplified contracts have been developed for nationwide application. If, in the development of individual contracts, it appears that modifications are necessary in order to comport with specific legislative requirements, they will be considered and incorporated, as appropriate, on a case-by-case basis. The NPS further notes that the 1998 Act specifically states that the Act does not amend, supersede or otherwise affect any provision of ANILCA relating to revenue producing visitor services (Sec. 415(c) of the 1998 Act).

Only one of the 22 commenters objected to the length and level of detail of the proposed simplified contracts. NPS has made every effort to streamline the simplified contracts to the extent possible. However, it considers that all of the provisions are required in order to give NPS the ability to properly preserve and protect the resources of areas of the national park system and their visitors. Further, the simplified contracts provide added protections to small concessioners that were not afforded under the terms of concession permits with regard to NPS administrative actions.

In developing these final simplified contracts, NPS has incorporated the changes it has made to the Category I contract in response to public comment, to the extent applicable. Those changes, and the discussion of those changes, are incorporated and made a part of this notice, as if repeated fully herein. In addition, discussions of comments and/or changes made in response to public comments on 36 CFR part 51 as amended, to the extent that they are applicable to the simplified contracts, are also incorporated and made a part of this notice. NPS has also made several editorial and conforming changes to the simplified contracts in addition to the changes discussed below.

* * *